CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the Criminal Proceedings etc. (Reform) (Scotland) Bill introduced in the Scottish Parliament on 27 February 2006:

- Explanatory Notes;
- a Financial Memorandum;
- an Executive Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 55–PM.

EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

4. All references to "the 1995 Act" in these notes relate to the Criminal Procedure (Scotland) Act 1995 (c. 46) unless otherwise stated.

PART 1 - BAIL

Section 1 – Determination of questions of bail

5. This section inserts into the 1995 Act three new sections setting out the legislative framework for bail decisions. At present, the substantive law on bail is still largely common law. Statute determines whether a crime is bailable, when bail may be applied for and the standard conditions on which bail may be granted but not the general right to bail or the reasons for refusal (the Lord Justice-Clerk Wheatley in *Smith v M 1982 JC 67*).

6. The provisions codify the current common law by setting out a general entitlement to bail, the circumstances in which bail may be refused and a non-exhaustive list of the considerations that will be relevant to the court in its assessment of whether the circumstances in which bail may be refused are applicable in any particular case.

New Section 23B

7. Subsection (1) makes it clear that bail is to be granted except where certain grounds for refusing bail (set out in more detail in new section 23C and section 23D) apply and where the court having regard to the public interest considers there is good reason to refuse bail. This reflects the position in relation to detention of an accused person set out in Article 5 of the European Convention on Human Rights and the general principles of Scots common law and the case law of the European Court on Human Rights. For example, *McIntosh v McGlinchey 1921 JC 75* provides that bail must be granted unless "in the exercise of its discretionary right of refusal and looking to the public interest and securing the ends of justice, there is good reason why bail should not be granted". See also *Young v HMA, 1988 SCCR 517* and *Smirnova v Russia application No 46133/99 and 48183/99 July 24th 2003.*

8. In applying the 'public interest' test the court will take into account the interests of justice, since it must be in the broader public interest that individual court decisions reflect the interests of justice. Considerations of public safety are also relevant.

9. Subsection (2) qualifies subsection (1) by making it clear that in determining the question of bail, the court must consider whether where the public interest could be secured by the imposition of bail conditions rather than detention.

10. Subsection (3) makes clear that the decision on bail is for the court and the court alone, and that the attitude of the prosecutor (who has a right to be heard and who can oppose bail) does not restrict the exercise of the court's discretion. This provision reverses the currently understood position in Scots law set out in *Spiers v Maxwell 1989 SLT (N) 282* and the more recent decision by the High Court of Justiciary in *M.A.R v Dyer, 4 November 2005* where the court concluded that if the prosecutor did not oppose bail it should be granted.

11. If the prosecutor does not oppose bail the court will have only limited information about the accused recorded on the petition or complaint, although they will be able to see from the terms of the complaint alleged bail aggravations and any bail breaches with which the accused is charged. Subsections (4) and (5) therefore place beyond doubt the right of the court to seek information relevant to the bail decision of the prosecutor or the accused's legal representative. Examples of relevant information might be the accused's previous convictions, which would show whether s/he has previously breached bail. Subsection (5) gives those parties the right to decide whether or not to offer any opinion on the risks attached to the bail decision. This is designed to give them discretion where they wish to express an opinion, but to ensure that they cannot be pressed into giving one where they do not wish to do so, risk being a matter for the court to determine.

New Section 23C

12. New section 23C sets out the grounds for refusal of bail. These reflect the grounds recognised under Scots common law and ECHR case law. In each case the grounds for refusal apply only where there is a 'substantial risk' of an adverse outcome; the ECHR case law makes clear that a risk must be identifiable and supported by evidence (for example, evidence relating to the previous conduct of the accused).

13. The grounds listed are that a person might, if granted bail;

- Abscond;
- Fail to appear at a future court hearing;
- Commit further offences;
- Interfere with witnesses or otherwise obstruct the course of justice.

14. Public safety is not separately identified as a ground for refusal, but a consideration of the risk of further offending necessarily bears upon public safety.

15. Subsection (1)(d) gives the court the right to refuse bail on the grounds of 'any other substantial factor which appears to the court to justify keeping the person in custody.' This is designed to ensure that the court has sufficiently flexible discretion, but exercise of that discretion will be constrained (as it already is) by ECHR case law. Other factors recognised by ECHR case law, although they will rarely be applicable, include the preservation of public order

and the protection of the accused. These factors might, for example, apply where individuals on serious terrorism charges appear before the court.

16. Subsection (2) gives an illustrative and non – exhaustive list of material considerations to which the court must, where they exist and are relevant, have regard when taking the bail decision. The considerations identified are;

- The nature and seriousness of the alleged offences;
- The probable disposal of the case if the individual were convicted (a strong likelihood of a serious custodial sentence, for example, would be relevant here);
- Whether the individual was on bail, or was subject to other court orders or sentences, when the offences with which they are charged were allegedly committed;
- The individual's character and antecedents, including the extent and nature of their previous convictions and of any previous breaches of court orders or the terms of any release on licence or parole; and
- The individual's associations and community ties (for example whether there is a secure potential bail address and family support for the accused).

17. These reflect the considerations already taken into account under Scots common law. The subsection makes it clear that the court can also take any other material considerations which it identifies into account.

New Section 23D

18. Section 23D sets particular serious types of cases in relation to which bail, despite the general entitlement is to be granted in exceptional circumstances. A similar exceptional circumstances test operates in England and Wales under section 25 of the Criminal Justice and Public Order Act 1994. Section 23D reflects the fact that under article 5(3) of the ECHR, detention would usually be justified when someone with a previous conviction for a grave offence is charged with a second such crime on the basis that this demonstrates a need to prevent further offences whilst on bail. It would therefore only be exceptionally that detention was not justified under the Convention. These types of cases are;

- Where an individual is on a serious charge (to be heard before a jury) of a violent or sexual offence and has a previous serious conviction for a violent or sexual offence; and
- Where an individual is on a serious charge of drug trafficking and has a previous serious conviction for drug trafficking.

19. The section also defines the terms 'drug trafficking offence' 'sexual offence' and 'violent offence'. The definition of drug trafficking covers a wide range of drug related offences, including production and supply of controlled drugs, and any involvement in or offer to supply and possession with intent to supply such drugs. Sexual offence is defined with reference to section 210A(10) and (11) of the 1995 Act which does not include prostitution.

20. The court is also entitled to take into account convictions for similar serious offences in England, Wales, Northern Ireland and any other state of the European Union. The court is specifically given discretion to determine whether a conviction in another jurisdiction is equivalent to a conviction on indictment in Scotland for one of the offence types listed.

21. Subsection (7) makes it clear that this section is without prejudice to the wider factors and considerations to be taken into account in relation to every bail decision which are set out in new Section 23C.

Section 2 – Bail and bail conditions

22. This section makes a series of changes to the bail law in sections 24 and 25 of the 1995 Act.

23. Subsection (1)(a) provides that where the court grants or refuses bail, it must state its reasons for that decision. This will apply to any bail decision in the 1995 Act. At present there is no formal requirement for judges to give reasons. Strasbourg case law makes clear that when a court considers it appropriate to detain a person it must set out the reasons for their decision – see *Vehbi Selcuk v Turkey 2006, application No 00021768/02.*

24. Subsection (1)(b) adds an additional standard bail condition to the list at section 24(5) that requires the accused not to cause alarm or distress to witnesses. At present, the only standard condition relating to witnesses requires the accused not to "interfere with witnesses" This condition will not always deal adequately with the sort of behaviour that can be of concern as it may require the accused to threaten or intimidate the witness in some way specifically intended to deter them from giving evidence rather than general abuse *per se*. This provision therefore makes clear for the avoidance of doubt that in relation to witnesses, all behaviour which causes or is likely to cause alarm or distress is prohibited.

25. Subsection (2)(a) and (b) confers on the court a new responsibility to explain to the accused the implications of the conditions and the consequences of their breach, and ensures that the consequences of bail breach are also spelled out in the formal written bail order. The court must also explain the need (set out in subsection (2)(c) – see below) to seek the court's consent in certain circumstances to a change in the 'domicile of citation'.

26. The bail order contains the 'domicile of citation' – the address at which formal communications relating to the case will be sent to the accused. This need not be the address at which s/he normally resides – it may, for example, be care of his or her solicitor. Under the law as it stands the accused may ask the court to alter his or her domicile of citation, but is under no obligation to do so if s/he moves house.

27. Subsection (2)(c) inserts into Section 25 of the 1995 Act two new subsections providing that where the domicile of citation is the accused's normal place of residence, and the accused moves house, the accused must within 7 days apply to the court for consent to alter the domicile of citation accordingly. Failure so to do is an offence, and penalties for that offence are prescribed.

Section 3 – Breach of bail conditions

28. This section amends sections 27 and 28 of the 1995 Act which set out the powers and penalties at the disposal of the court when bail is breached.

29. Subsection (1)(a) increases the custodial penalty available in the sheriff summary court for failure to appear at a hearing or breaching a condition of bail from 3 to 12 months.

30. Subsection (1)(b) inserts a new subsection (4B) into section 27 which brings the offence under Section 27(1)(a) of the 1995 Act of failure to appear in line with the provision which already exist in relation to offences on bail under Section 27(3). Where the defence does not challenge the prosecution assertion that the individual;

- was on bail;
- was subject to particular bail conditions;
- failed to appear at a diet; or
- was given due notice of a diet

that assertion shall be held to be admitted, and the prosecution is not separately required to prove the assertion.

31. Subsection (1)(c) relates to the situation in which an offence has been committed while on bail, and the court is therefore required under section 27 to have regard to that fact when sentencing after conviction. In such cases, section 27 allows the court to impose an aggravated sentence reflecting the breach of trust involved, and section 27(5) makes clear that such a sentence can exceed the maximum penalty for the offence committed currently available.

32. At present the judge who imposes an aggravated sentence under this section must explain the nature and extent of the difference from the sentence which the accused would have received had s/he not been on bail. But where the judge decides not to add any element to the sentence reflecting the bail breach, there is no obligation to explain why. Subsection (1)(c) creates such an obligation, providing that where the judge decides not to increase the sentence to reflect the bail breach, an explanation must be given.

33. Subsection (1)(d) increases the maximum custodial penalty for offences of failure to appear/breach of bail in solemn cases from 2 to 5 years. Subsection 1(e) amends section 27(9). At present, section 27(9) allows the court to impose a penalty for the section 27(2) offence of failure to appear or to comply with a bail condition in addition to the penalty for the original offence and regardless of whether the total of the two penalties would exceed the maximum penalty that the court is competent to impose for the original offence. The amendment alters this discretion by requiring the court in all cases to impose a section 27(2) penalty in addition to any penalty for the original offence. Subsection (1)(e) makes further provision by inserting a new section 27(9A) which makes it clear that the reference to a section 27(2) penalty being imposed "in addition" to the penalty for the original offence means that the court is required to impose consecutive sentences where the penalties are imprisonment or detention. This will apply whether or not the sentences relate to the same complaint or indictment and whether or not they are imposed at different times. New section 27(9B) makes it clear that this obligation is subject

to the usual restriction in section 204A of the 1995 Act where a court is prevented from imposing a sentence that is consecutive to any sentence from which the person has already been released.

34. Subsection (2) amends section 28 of the 1995 Act. At present, section 28 gives a constable power to arrest without warrant an accused who has been released on bail where the constable has reasonable grounds for suspecting that the accused has broken, is breaking, or is likely to break any condition imposed. The accused is brought before a court and after hearing parties, the court may recall the bail order, release the accused or vary the bail order.

35. However, where there has been a bail breach, an accused will not necessarily be arrested under section 28. It would be possible for the accused to be arrested without warrant for the section 27(1) offence of breaching bail (the police have powers to arrest without warrant for statutory offences punishable by imprisonment). Alternatively, the accused may have been arrested for committing a separate substantive offence (whether common law or statutory). It may be discovered later that the circumstances of the offence show that the accused also breached a bail condition. Alternatively a police officer may arrest a person known to have an outstanding warrant. It may subsequently be discovered that the place the person was seen is one in which that person is prohibited from entering in terms of a bail order. In all these cases proceedings under section 28 are barred because the arrest was for something else.

36. Subsection (2) is therefore directed at widening out the existing section 28 powers to ensure that a person can be detained and brought before a court under section 28 for breaching bail even although the person was arrested for a breach of bail under section 27 or was arrested in relation to a separate substantive offence and it turns out that the circumstances of that offence show that the person was breaching bail. The amendment ensures that whenever the police arrest someone in these circumstances they may detain them in custody and make use of the provisions set out in Section 28(2) – (6) of the 1995 Act to bring that individual to court for the court to consider recalling or altering the bail order.

Section 4 – Bail review and appeal

37. This section makes a number of amendments to sections 30 and 32 of the 1995 Act which relate to the processes by which bail decisions may be reviewed or appealed.

38. Subsection (1) clarifies the evidence which will be required when an individual seeks a review of the decision to refuse bail, or of the bail conditions imposed. At present the individual does not have to put any new information before the court; in future, the court which reviews the original decision will only be able to grant bail, or alter an existing bail order, where there is a material change in the person's circumstances or the person puts before the court material information which was not available to the court which made the original order.

39. Subsection (2) makes a series of alterations to section 32 which, as read with section 24(7) deals with bail appeals against bail decisions and the conditions imposed. At present there is no requirement on the bail court judge who make the original decision to provide the appeal court with a reasoned account of why that decision was made. These changes alter that position, providing that the judge whose decision is being appealed must be informed of the bail hearing and must, at least 24 hours before it is heard, submit to the clerk of court a written report of his

or her reasons. This report will be copied to the accused or his solicitor, and to the Crown Agent.

40. The provisions also cover what happens if the judges' report is not produced in time for the hearing – bail appeals are heard within days and there may be circumstances (for example, judicial illness) where the report is not available. To avoid undue inflexibility these provisions therefore give the High Court sitting as a bail appeal court power to hear the appeal without the judge's report if that report is not available, as well as power to insist that it be produced within a given time. These amendments are based on similar requirements that are imposed in relation to appeals in general in section 113 of the 1995 Act. In line with the practice for general appeals, the amendments provide that the judge's report is to be available only to the High Court and the parties to the case but with scope for an Act of Adjournal to prescribe other persons who may get access.

Section 5 – Time for dealing with applications

41. This section amends section 22A of the 1995 Act to provide that when an accused first appears in court from custody, a decision must be taken on his admittance to or refusal of bail by the end of the following day. At present that decision must be taken within 24 hours, which has to be interpreted literally. This means that a case which called at 14.20 on Wednesday and was continued overnight would have to be dealt with by 14.20 on the Thursday even if there were priority cases to be called that day. The change gives a little more flexibility while still ensuring that the court can only keep someone in custody for one night before taking a substantive decision on whether to grant or refuse bail.

42. Similar changes are made where an accused seeks bail at any hearing other than the first one in the case (section 23 of the 1995 Act) and where bail is sought pending the hearing of a stated case (section 177 of the 1995 Act).

PART 2 - PROCEEDINGS

Police functions

Section 6: Liberation on undertaking

43. This section amends section 22 of the 1995 Act which makes provision for suspected offenders to be released from custody on the undertaking that they will appear in court on a specified day. The use of undertakings is currently limited to cases in which the suspected offender has been arrested and is consequently held at a police station. It is only open to an officer in charge of the police station to liberate the arrested person on such an undertaking. Section 22 only applies to offences which can be tried summarily.

44. Section 6(2) removes the need for a suspected offender to be arrested before being released on an undertaking. Provision is now made to allow the officer who charged the person to release that person on undertaking; the need for this to be done by an officer in charge of a police station is removed. Similar provisions is made for persons who have been arrested under sections 21 (Schedule 1 offences: power of constable to take offender into custody) and section 135 (Warrants of apprehension and search) of the 1995 Act.

45. Section 22 of the 1995 Act will now allow for the charging or, where appropriate, arresting officer to liberate a person on an undertaking. The officer in charge of the police station retains the power to liberate a person on undertaking. The section provides that the person undertakes to appear at a specified court on a specified date and time and under specified conditions. New section 22(1D) allows additional conditions to be imposed upon the person who signs the undertaking. New section 22(1E) of the 1995 Act gives Ministers the power, by regulation, to describe those police officers whose authority is required before the conditions set out in subsection (1D) can be imposed.

46. New sections 22(1F) and 22(1G) are inserted into the 1995 Act and provide that the procurator fiscal is not bound by the terms of the undertaking and may rescind the undertaking or vary the date, time and court to which the person is to attend. The procurator fiscal may also revoke or relax any of the conditions which have been imposed in relation to the undertaking. The maximum penalty for a breach of the undertaking when prosecuted in the sheriff court is increased from 3 months imprisonment to 12 months imprisonment by amending section 22(2)(b)(ii) of the 1995 Act. New subsection (4A), as inserted, provides that, unless challenged by a preliminary objection, an accused who breaches an undertaking by failing to appear or by contravening a particular condition will be held to have admitted the failure to appear or breach of condition

47. Section 135 of the Act is amended to provide that where a person has been apprehended on a warrant; by virtue of a power under any enactment; or by virtue of any rule of law and released on an undertaking, the person's appearance on the date specified on the undertaking is regarded as if it were appearance in consequence of that person being brought before the court on the first available court date if they had been held in custody. This provision will also apply to any witness apprehended under the new section 156 of the 1995 Act as inserted by section 16 of this Bill.

Summary procedure

Section 7: Electronic proceedings

48. This section makes provision to allow for proceedings in the summary courts to be carried out electronically. New section 305A is inserted into the 1995 Act.

49. Section 138 of the 1995 Act provides that all summary proceedings must be instituted by a complaint which is signed by the procurator fiscal. The form and content of such a complaint is detailed in schedules 3 and 5 to the 1995 Act and rule 16.1 of the Act of Adjournal (Criminal Procedure Rules) 1996. Subsection (1) of the new section provides that proceedings may be initiated by electronic complaint and where this is the case the requirement for a signature by the procurator fiscal is satisfied by an electronic signature. Electronic signature attracts the definition which is given to it in section 7(2) of the Electronic Communications Act 2000 (c.7).

50. Subsection (2) of the new section provides that any reference in the Act to a complaint includes a reference to an electronic complaint unless otherwise required.

51. Subsection (3) of the new section provides that where proceedings were initiated by electronic complaint that complaint shall be held to be the principal version of the complaint in the event of any conflict between that complaint and any other document.

52. Subsection (4) provides that a certificate produced by the prosecutor stating the period of time to be disregarded in calculating the date of commencement of proceedings (for the purposes of calculating time-bar in a case) where an offer from the prosecutor of a fixed penalty, compensation offer or work order has not been accepted or is recalled may be authenticated by an electronic signature. This relates to the provision in section 136B of the 1995 Act, which is introduced by section 42 of this Bill – the certificate is referred to in the new section 136B(2).

53. Subsection (5) of the new section similarly provides that where amendments are made to the complaint authentication by the clerk of court by means of an electronic signature shall be sufficient.

54. Subsection (6) of the new section provides that an electronic signature shall be sufficient authentication on a statement of uncontroversial evidence.

55. Subsection (7) of the new section provides that an electronic signature will be sufficient authentication where corrections of errors have been made in summary proceedings.

56. Subsections (8) & (9) of the new section give definitions of electronic complaint, electronic communication and electronic signature.

57. Subsections (10) & (11) of the new section provide that Scottish ministers may by statutory instrument modify the meaning of electronic signature.

58. Subsections (2) (3) & (4) of section 7 of the Bill provide that the Scottish Ministers may, by order, make provision for the purpose of or in connection with using electronic complaints, keeping the record of proceedings in electronic form and using electronic communication. Such an order may relate to the availability of documents and records to specified persons or classes of persons, the authentication of documents and records in electronic form and the use of electronic signatures in documents and records.

Section 8: Manner of citation

59. This section amends section 141 of the 1995 Act which relates to the citation of accused persons and witnesses in summary proceedings. The new section provides for citation in person to be carried out by persons other than an officer of law; for citation by ordinary post and for citation by electronic means.

60. Paragraph (a) substitutes a new section 141(1) of the 1995 Act, which provides that personal service may be effected on an accused or a witness by an officer of law or other person.

61. Paragraph (b) provides for citation of the accused by ordinary post.

62. Paragraph (c) inserts a new subsection (3A) into section 141, and provides that citation of witnesses and accused shall be effective if sent by the prosecutor by electronic means to either the home or business email address of the witness or the accused.

63. Paragraph (e) inserts a new subsection (5ZA) into section 141. It provides that where an electronic communication bears to come from the accused's email address and it can be inferred that the electronic citation referred to in subsection (3A) has come to the accused's knowledge, that shall be admissible as evidence that s/he received the citation.

64. Paragraph (f) provides for electronic citation of witnesses by the solicitor acting for the accused.

65. Paragraph (g) inserts a new subsection (5B) and provides that where a witness who has been cited by electronic means fails to attend, a warrant for the apprehension of the witness will not be granted unless the court is satisfied that the witness received the citation or that the contents were brought to the witness's attention. This is in line with the provisions for accused persons in terms of section 141(4) of the Act as amended by section 14(1) of this Bill

66. Paragraph (h) provides that any period of notice of any citation effected by electronic means shall be calculated from the end of the day on which the citation was sent.

67. Paragraph (i) inserts new subsections (7A) & (7B) and provides for proof of service by electronic means and provides a definition of electronic citation.

Section 9: Procedure at first calling

68. This section gives prosecutors and courts additional flexibility in the conduct of hearings which are calling in court following the accused being cited to appear (sometimes referred to as "diet courts").

69. Section 9 amends section 144 of the 1995 Act and introduces new procedures in relation to the first calling of summary complaints. The clerk of court and prosecutor are given additional powers, to make it competent to deal with that process without the involvement of a judge.

70. Subsection (1)(b) inserts new subsection (3ZA) & subsection (3ZB) into section 144 of the 1995 Act. It provides that, where written intimation is received from an accused and the prosecutor is not satisfied that the intimation was made or authorised by the accused (or that the terms of the plea are not clear) the case may be continued to another date. The clerk of court may authorise that continuation without the need for the sheriff, magistrate or justice to sit in court. Where the plea tendered is one of not guilty the clerk of court may fix a date for trial and, where appropriate, a date for an intermediate diet. Again, the clerk may exercise this function of the court without the need for the sheriff, magistrate or justice to sit in court.

71. Subsection (2) amends section 145A of the Act to allow the clerk of court to adjourn the case in the circumstances set out in section 145A(2) of the Act. The clerk may exercise this power without the need for the sheriff, magistrate or justice to sit in court.

Section 10: Intimation of diets etc.

72. This section introduces a safeguard in relation to the accused's right to fair trial by making provision that will mean that the accused is informed of the consequences of non-attendance. This section is introduced as a consequence of the provisions found in section 14 of the Bill which deal with proceedings in absence.

73. The section amends section 146 of the 1995 Act by inserting two new subsections (3ZA) and (3ZB). These subsections provide that when adjourning a case for trial the court shall intimate the diet of trial, and any intermediate diet, to the accused and inform the accused that should s/he fail to appear at any diet in the proceedings the court may hear and dispose of the case in his/her absence.

Section 11: Pre-trial time limits

74. This section amends section 147 of the 1995 Act. Section 147 now provides that the sheriff may on cause shown extend the period of 40 days in which the accused must be brought to trial where s/he is detained in custody. New subsections (2A) and (2B) provide that parties must be given an opportunity to be heard on any motion to extend the time limit but, where parties are agreed as to the extension, it provides that the sheriff may dispose of the application without hearing the parties.

Section 12: Disclosure of convictions

75. This section amends the 1995 Act in relation to the disclosure of previous convictions in summary proceedings by inserting two new sections into that Act.

New section 166A

76. Section 166A as inserted into the 1995 Act provides that the court may take account of any convictions acquired by the accused between the date of the offence before the court and the date of conviction. The prosecutor is required to provide a notice of such convictions to the court. Either the accused must admit these convictions or they must be proved by the prosecutor. Presently only convictions acquired by an accused prior to the date of the offence on the compliant can be taken into account by the court.

New Section 166B

77. Subsection (1) of section 166B borrows from and extends the existing provisions of section 166 of the 1995 Act. It provides that a complaint may contain, and evidence may be led in respect of charges, notwithstanding that the charges, or evidence, may disclose the fact that the accused has previous convictions. The prosecutor presently in proceedings is restricted as to how s/he may make it known to the court that the accused has been previously convicted. The prosecutor may only lead evidence of previous convictions where that fact is evidence of the charge before the court or ask questions of the accused as a witness to show that s/he has been previously convicted where s/he has given evidence that s/he is of good character.

78. Subsection (2) provides details of when previous convictions may be disclosed on complaints (where the offences relate to the same occasion, are of a similar character or form part of a course of conduct). This is a fundamental change in procedure. Presently where an accused is charged with a series of offences and one or more of these offences is due to the fact that the accused has a previous conviction it is necessary to separate those charges which disclose the conviction from the other related charges. The most common scenario is where an accused is charged with a motoring offence and it is discovered that the accused has been previously convicted and disqualified from driving. The charge of driving whilst disqualified presently requires to be included in a separate complaint from the other charges (for instance careless or drunk driving) and where the accused pleads not guilty to the charges two separate trials are required. This provision will allow all the charges to be included in one complaint and evidence in respect of all the charges to be led at one trial.

Section 13: Complaints triable together

79. This section inserts a new section 152A into the 1995 Act and provides that where the accused is appearing for trial on two or more complaints on the same day the prosecutor may apply to the court to have all the charges tried together, notwithstanding that they are on separate complaints. The court, if it considers it expedient to do so, is to try the charges together. However, for further proceedings including sentence the complaints are to be treated separately. This provision will allow a court where there is more than one complaint against an accused for trial on the same day to conjoin the complaints to allow evidence in respect of all the charges to be led and the verdict returned in the one trial. Presently a separate trial in respect of each complaint is required with a separate verdict on each complaint being returned.

Section 14: Proceedings in absence of accused

80. This section amends sections 141, 145A and 150 of the 1995 Act, and inserts a new section 150A into that Act. The purpose is to extend the present provisions for proceedings at diets where the accused fails to appear. The section expands on the current provisions dealing with trials in absence found in section 150(5) of the 1995 Act. The amendments are minor and are consequential to the substantive change in relation to proceedings in absence against the accused.

81. Subsections (1) & (2) are consequential amendments upon subsection (3).

82. Subsection (3)(a) inserts a new subsection (3C) into section 150. It deals with the situation at an intermediate diet where the accused fails to appear and the court grants a warrant to apprehend the accused. In those circumstances the effect of section 150(3A) has the effect of discharging the trial diet *unless* the court grants an order to differing effect under section 150(3B). Section 150(3C) is added to confirm that an order under section 150(3B) (i.e. an order *not* to discharge the trial diet where the accused has failed to appear and a warrant to apprehend the accused has been granted) may be made for the purpose of having a trial in absence or for any other purpose. An order under section 150(3C) can be made on the application of the prosecutor or of the court's own accord.

83. Subsections (5) to (7) of section 150, which outline the circumstances in which proceedings can currently take place in the absence of an accused in summary cases, are repealed and replaced by section 150A.

New section 150A

84. Subsections (1) to (3) of the new section 150A allow for a court to hear any diet, except a diet of first calling, in the absence of the accused. In most instances this will be on the motion of the prosecutor; however, where the accused is absent from a diet set for sentencing, for example, where the case has been adjourned for a social enquiry report following conviction of the accused, the court may proceed to pass sentence of its own accord. Two requirements are imposed by new section 150A. These are: firstly, the court must be satisfied that the accused was duly cited to the hearing or that s/he received intimation of the hearing; and, secondly, that it is in the interests of justice to proceed in the accused's absence. This includes leading evidence and returning a verdict.

85. Subsections (4) to (7) of new section 150A provide that the court may allow any solicitor acting for the accused to continue to act if the court is satisfied that the solicitor has authority to act. The court may appoint a solicitor to act on behalf of the accused if it considers it to be in the interests of justice to do so. Subsection (8) of new section 150A provides for exceptions to these provisions. Subsection (10) of the new section 150A provides that the court may not impose a custodial sentence in the absence of the accused. Nor will the court be able to impose a sentence on the accused which requires the accused's consent (e.g. probation and community service orders).

Section 15: Failure of accused to appear

86. This section changes the penalties available in cases where the accused fails to attend court and how that failure is proved.

87. Paragraph (a) amends section 150(8) of the 1995 Act, and increases the penalty for failure to appear at a summary diet, to which an accused person has been given due notice, from 3 months to 12 months. This increase applies only to failure to appear in the sheriff court. There is no change to the penalties available to the district court.

88. Paragraph (b) amends section 150(9) of the 1995 Act and has the effect of compelling the court to impose a penalty for failure to appear. It provides that any penalty for failure to appear shall be in addition to any other penalty imposed at that time even if the total of the two penalties exceeds the maximum sentence for that offence.

89. Paragraph (c) inserts new subsections (9A) & (9C) into section 150. New subsection (9A) provides that any custodial sentence for failure to appear must, if imposed at the same time as another sentence, be served consecutive to the other sentence and, where imposed at a different time, take effect consecutively to the sentence imposed for the original offence. New subsection (9C) provides that, in relation to a charge of failing to appear, unless this is challenged by a preliminary objection, the fact that the accused failed to appear after having been given due notice will be held as admitted.

Section 16: Obstructive witnesses

90. This section introduces new provisions for dealing with obstructive witnesses. The purpose is to bring the procedures in summary procedure into line with those in solemn procedure by substituting a new section 156 and inserting four new sections, 156A to 156D, into the 1995 Act. Previous requirements for a witness to pay sums of money as security for his or her appearance are repealed.

91. New subsections (1) & (2) of section 156 as substituted provide that where a witness has been cited to appear at a diet and deliberately and obstructively fails to do so, the court, on the motion of any of the parties, may grant a warrant to apprehend the witness. Subsection (3) provides that where the court is satisfied by evidence on oath that a witness will not attend unless compelled to do so the court may grant a warrant for the apprehension of that witness.

92. Subsection (4) of new section 156 provides that where a witness fails to attend after being duly cited the fact that s/he failed to appear will be presumed to be deliberate and obstructive unless there is evidence to the contrary.

93. Subsection (5) provides that any application for the apprehension of a witness may be made orally or in writing and may be disposed of in open court or in chambers.

94. Subsection (7) provides that officers of law may apprehend the witness and bring him to court and outlines the powers available to them in executing the warrant.

95. Subsection (8) provides that this procedure is the only competent way of applying for a warrant for the apprehension of a witness in summary proceedings.

96. Subsection (9) refers to section 135(3) of the 1995 Act which, as discussed above in relation to section 6 of this Bill, makes provision for persons arrested on warrant to be brought to court.

New section 156A

97. Section 156A as inserted provides for orders which the court may make in relation to any witness apprehended under a warrant granted under section 156.

98. Subsection (1) provides that where a witness has been apprehended and brought before a court the court may detain the witness in custody until the conclusion of the diet at which the witness is to give evidence, release the witness on bail, or liberate the witness.

99. Subsection (2) provides that an order detaining the witness or an order placing the witness on bail may only be made if the court is satisfied that such a course of action is necessary to secure the attendance of the witness and that it is appropriate to do so. Subsection (3) provides that the court shall state the reasons for making an order under section 156A(1).

100. Subsection (4) provides that, notwithstanding these powers, the court may deal with the witness for any contempt of court which the court considers to have been committed and dispose of the case accordingly.

101. Subsection (5) provides that where the witness has been ordered to be detained in custody the court, if it decides to excuse the witness from the diet at which s/he was to give evidence, may recall the order and liberate the witness.

102. Subsections (6) & (7) provide that the court, when granting the witness bail, may impose such conditions, other than a requirement to deposit a sum of money, as the court considers necessary to secure the attendance of the witness.

103. Subsection (8) applies with modifications to section 25 (Bail conditions: supplementary) of the 1995 Act to orders made under section 156A(1)(b) (i.e. where the court releases an apprehended witness on bail). Section 25, amongst other things, provides that the requirement of an accused to give details of his address at which s/he may be cited to attend court when liberated on bail. This requirement will apply to a witness liberated under these provisions.

New section 156B

104. Section 156B as inserted makes provision for dealing with witnesses who are liberated on bail and who breach that bail. The penalties for a witness who breaches conditions of bail are similar to those for an accused who breaches bail.

105. Subsections (1) & (2) provide that if a witness who has been released on bail fails to attend at court or breaches any other condition of bail the witness is guilty of an offence. The penalties differ depending on whether the bail order was issued by the justice of the peace court (JP court) or the sheriff court, and are the same as for a standard breach of bail.

106. Subsection (3) provides that, in proceedings for breach of bail, the fact that the witness was on bail, or was subject to a particular condition of bail, or that s/he failed to appear at a diet to which s/he had been cited, shall be held to be admitted unless challenged by a preliminary objection.

107. Subsection (4) provides that the provisions of section 28 (Breach of bail conditions: arrest of offender, etc) of the 1995 Act which relate to the breaching of bail by an accused shall apply with modifications to a witness who is in breach of bail under these provisions.

New section 156C

108. Section 156C as inserted provides for the review of orders detaining the witness in custody or releasing the witness on bail.

109. Subsection (1) provides that where the court has made an order to detain the witness in custody it may, on the application of the witness and on cause shown, recall that order and release the witness on bail or liberate the witness. Parties to the case and the witness will be given an opportunity to be heard on the application.

110. Subsection (2) provides that where the witness has been liberated on bail the witness, or the party who made the application to apprehend the witness, may apply to the court to review the conditions imposed when making the bail order and to make a new bail order. The court has power to make a new order to liberate the witness on bail and impose different conditions. Subsection (3) provides that court may only review a bail order if the circumstances of the witness have changed or if material information is presented to the court which was not available at the time that the original order was granted.

111. Subsection (4) provides for time limits in which applications for a review may be made.

112. Subsection (5) outlines the procedure the court must follow upon the receipt of any application for a review.

113. Subsection (6) preserves rights of appeal against decisions taken under section 156A(1).

New section 156D

114. Section 156D as inserted provides for appeals against any of the orders granted by the court in relation to a witness apprehended on a warrant.

115. Subsections (1) & (2) provide that the witness, the accused or the prosecutor may appeal to the High Court against any order detaining the witness in custody or liberating the witness or (where the witness has been granted bail) against that bail order, any of the conditions specified in the order or both.

116. Subsections (3) & (4) provide for the intimation and hearing of the appeal.

117. Subsection (5) applies the provision relating to the remand or committal of an accused person under the age of 21 years to a witness under that age.

Section 17: Prosecution of companies etc.

118. This section makes provision in respect of the prosecution of companies. It amends section 143 of the 1995 Act.

119. The section as amended provides that bodies corporate may be represented by a representative. It defines a representative and how that representative proves to the court that s/he has authority to represent the body corporate.

120. The section further provides that if the body corporate fails to appear or be represented at a diet to which it has been cited or had due intimation of the court may proceed to hear and dispose of the case. In proceeding in the absence of a representative the court must satisfy itself that citation or intimation have been effected on the body corporate and that it would be in the interests of justice to proceed. The provisions relating to proceedings in the absence of a company representative are comparable to those made in section 150A of the 1995 Act (inserted by section 14 of this Bill) which deals with proceedings in the absence of an individual accused.

Preparation for summary trial

Section 18: Intermediate diets

121. This section amends section 148 of the 1995 Act which relates to intermediate diets. The present position is that discharge of the trial diet is mandatory where, at the intermediate diet, the court considers that it is unlikely that the trial will proceed on the appointed day. This section changes that position by making discharge in these circumstances discretionary.

Section 19: Notice of defences

122. This section makes new provision in relation to the notification by the accused of a special defence or a notice calculated to exculpate the accused by incriminating a co-accused. The section substitutes the existing sections 149 (Alibi) and 149A (Notice of defence plea of consent) of the 1995 Act with a new section 149B.

New Section 149B

123. Subsections (1) & (2) provide that where the accused intends to insist on a special defence, a defence which incriminates a co-accused, a defence of automatism or coercion or a defence of consent in certain sexual offences, the accused must intimate that intention to the prosecutor in advance. Failure to so intimate will make it incompetent to found on that defence in court unless the court, on cause shown, allows the accused so to do. Currently, under the provisions of section 149, a defence of alibi may be founded upon at any time up until the first witness is sworn. A plea of consent in relation to certain sexual offences requires to be notified no less than 10 days prior to the trail diet.

124. Subsection (3) explains the meaning of consent for the purposes of subsection (2)(d).

125. Subsection (5) provides that intimation of any such defence must be given before an intermediate diet where such a diet is to be held or, where no such diet is to be held, no later than 10 days before the trial diet.

126. Subsection (6) sets out the particulars that must be provided when intimating such a defence. Details of any witnesses to be called to speak to it must be given. Additionally, if a defence of alibi is to be relied upon details as to time and place must also be given.

127. Subsections (7) & (8) provide that where a notice of defence is intimated to the prosecutor, the prosecutor is entitled to an adjournment of the case whether or not the notice was given timeously and whether or not the adjournment could have been at an earlier diet.

Section 20: Proof of uncontroversial matters

128. This section modifies the existing provisions which set down the procedure for dealing with evidence which is not thought to be in contention. This provision is designed to, as far as possible, bring the summary provisions in this regard into line with the equivalent provisions applicable to solemn cases. The relevant solemn provisions were introduced as part of the Criminal Procedure (Amendment) (Scotland) Act 2004.

129. The amendments to section 258 of the 1995 Act provide that the relevant diet by which a notice of uncontroversial evidence must be served on the parties to the proceedings is to be the intermediate diet where one has been fixed. Where one has not been fixed the trial diet becomes the relevant diet.

130. The changes to sections 258(2) and 258(2A) and insertion of section 258(ZA) mean that any notice of uncontroversial evidence must be served on parties to the proceedings not less than 7 days prior to the intermediate diet. Any subsequent objection to that notice must be served by the conclusion of the day on which that intermediate diet was held. Where an intermediate diet has not been set down the notice of uncontroversial evidence must be intimated within 14 days of a trial diet.

131. The reference to 'solemn proceedings' in subsection (4A) is repealed, thus all cases will be covered by the procedure in that subsection. This means that where a notice of uncontroversial evidence has been challenged, the court has the power to direct that that challenge is to be disregarded. The effect would be to allow the notice to be admitted as evidence notwithstanding the challenge.

132. Time limits are fixed in that subsection for an application to a court to have a challenge disregarded.

Section 21: Service of documents through solicitor etc.

133. This section introduces a new requirement on solicitors engaged by an accused for the purposes of the accused's defence at trial to intimate that fact to the procurator fiscal and the court. The purpose of the requirement is to enable documents, other than the complaint, to be served on an accused through that person's solicitor. A similar requirement already exists for solemn cases – see sections 72F and 72G of the 1995 Act.

New Section 148B

134. Subsection (1) as inserted provides that where a solicitor is engaged to act for an accused for the purpose of his defence at a trial the solicitor is required to intimate this fact in writing to the procurator fiscal and the court. The duty applies at a later stage than in solemn proceedings. In terms of section 72F, the duty in solemn proceedings applies wherever a solicitor is engaged for the purpose of the defence of the accused at any part of the proceedings. The provision made for summary proceedings reflects the fact that, at a first calling, the accused may not yet have contacted the solicitor of his choice for the trial, particularly where the accused is represented by the duty solicitor under the Legal Aid Scheme

135. Subsection (2) provides that the solicitor is deemed to have complied with subsection (1) in circumstances where s/he has (1) appeared at the first calling of the case and tendered a plea on behalf of the accused or intimated in writing a plea on behalf of the accused and (2) at the same time has notified the court and the prosecutor that s/he is also engaged by the accused for the purposes of the accused's defence at trial. The notification under subsection (2) can be given orally or in writing, whereas notification under subsection (1) must be in writing.

136. The effect of subsection (3) is that any solicitor who has intimated that s/he is acting for the accused must intimate if s/he is no longer acting for the accused for any reason.

New Section 148C

137. This section provides that where a solicitor who, by the operation of the provisions in sections 148B and 148C, is known to be acting for the accused it is possible to serve any material in relation to the proceedings on the solicitor rather than the accused, with the exception of the initial complaint which commences the proceedings.

Transfer of summary cases

Section 22: Transfer of proceedings

138. This section introduces new provisions extending the jurisdiction of the sheriff court in relation to the commencement and transfer of proceedings, including proceedings initiated in the JP court. The purpose is to increase the flexibility of the provisions relating to the transfer of business between different courts and (in certain cases) different sheriffdoms. It should be noted that paragraph 9 of the Schedule to this Bill introduces a new section 10A to the 1995 Act for purposes associated with this section.

139. Subsection (1) amends section 137A(1) of the 1995 Act and inserts a new subsection (1A). The effect of these amendments is that, where accused persons have been cited in summary proceedings to a diet or where citation has not taken place but summary proceedings have been commenced against an accused in a sheriff court, the prosecutor may apply to the sheriff to transfer the proceedings to another sheriff court in the same sheriffdom.

140. Subsection (2) amends section 137B of the 1995 Act by substituting a new subsection (1) and inserting five new subsections (1A), (1B) (1C) (2A) and (4). Subsection (1) as substituted provides that where a sheriff clerk informs the prosecutor that due to unforeseen circumstances it is not practicable for that sheriff court or any sheriff court within the sheriffdom to proceed with any of the summary cases to call at a diet, the prosecutor may apply to the sheriff principal to transfer the proceedings to another sheriff court outwith the sheriffdom, and for an adjournment to that court.

141. Subsections (1A) & (1B) as inserted provide that where an accused has been cited to a diet in summary proceedings or summary proceedings have been commenced against an accused in a sheriff court the prosecutor may apply to the sheriff for an order transferring the proceedings to another sheriff court in another sheriffdom where there are other proceedings against the accused in that court.

142. Subsection (1C) as inserted provides that where the prosecutor intends to take summary proceedings against an accused in the sheriff court the prosecutor may apply for an order to the sheriff for authority to take those proceedings against the accused in another sheriffdom where there are other summary proceedings against that accused in that sheriffdom.

143. Subsection (2A) as inserted provides that where an application is made under section (1A) or (1C) the sheriff to whom the application is made is to make the order if s/he considers it

expedient, and a sheriff of the receiving sheriffdom consents. Subsection (4) as inserted provides that the sheriff who made the order under subsection (2A) may revoke or vary the order transferring the proceedings if the sheriff of the receiving court consents.

144. Subsection (3) inserts a new section 137C into the 1995 Act. It provides that summary proceedings against an accused appearing from custody may be initiated outwith the sheriffdom where the proceedings would normally be commenced.

New section 137C

145. Subsections (1) & (2) as inserted provide that where there are exceptional circumstances leading to an unusually high number of accused appearing from custody under summary procedure, and it is unlikely that the sheriff courts in the sheriffdom will be able to deal with all these cases, the prosecutor may apply to the sheriff principal for an order that proceedings may be taken against some or all of the accused at another sheriff court in another sheriffdom. Proceedings can be maintained there or at the original court or be transferred to any of the sheriff courts in the sheriffdom where the offences are alleged to have taken place

146. Subsections (3) & (4) provide that the sheriff principal may only make the order if the sheriff principal from the receiving court agrees, and that the order may be for a particular period of time or to deal with a particular set of circumstances.

New Section 137D

147. Section 137D as inserted provides that a sheriff may order that proceedings in a JP court may be transferred to the sheriff court if there are proceedings outstanding for sentence there.

148. Section 137D as inserted provides that the prosecutor may apply to the sheriff to transfer cases awaiting sentence at a JP court to the sheriff court where there are outstanding cases for sentence. If the sheriff considers it expedient to make that order s/he will be limited to the sentencing power of the JP for any cases which were heard before a JP.

Section 23: Time bar for transferred and related cases

149. This section amends the law on time bar as it relates to transferred cases. It inserts a new section 136A into the 1995 Act.

New Section 136A

150. The section provides that where proceedings have been transferred from one sheriff court to another and those proceedings are contained in a new complaint, the date of commencement of proceedings in relation to the charges, including those at the court to which the proceedings have been transferred, is to be taken as the date on which proceedings on the complaints originally commenced.

Other summary provisions

Section 24: Reports about supervised persons

151. This section introduces new provisions into section 203 of the 1995 Act in relation to the requirement that the court requests a report from the local authority in certain cases by inserting new subsections (1A) and (1B) into the section.

152. Subsection (1) of section 203 provides that where an offender who is the subject of a statutory supervision requirement is due to be sentenced for a further offence the court must request a report from the local authority on the offender. Subsection (1A) as inserted provides that where a report has been provided in respect of that offender in the three months prior to conviction the court need not request a further report, but can still do so if it considers it necessary.

153. Section (1B) as inserted provides that where the court considers that a report from the local authority would not be of material assistance when considering the disposal of the case the court need not request such a report.

Section 25: Summary appeal time limit

154. This section amends some of the time limits applicable to summary appeals.

155. Subsection (1) amends section 180 of the 1995 Act by inserting a new section (4A) which provides that the High Court may, on the application of the appellant, extend the 14 day period in which the appellant may apply to the High Court for review of the single judge's decision to refuse to grant leave to appeal. The provision is retrospective and applies to appeals where leave was refused before the implementation of this section. There is currently no provision which allows for this 14 day period to be extended.

156. Subsections (2) & (3) amend the provisions of sections 186 (appeals against sentence only) and 194 (computation of time). Currently, where an appeal is lodged under section 186 the clerk of court will within 2 weeks of the passing of the sentence, disposal or order, send to the Clerk of Justiciary the note of appeal which has been lodged by the convicted person together with a report from the judge who sentenced the convicted person or disposed of the case. The clerk of court also requires to send the judge's report to the respondent and appellant. That two week period may be extended by the sheriff principal of the sheriffdom in which the judgement was pronounced. There are, currently, three grounds for granting such an extension under section 186(5) of the 1995 Act: the judge is temporarily absent from duty for any reason; the judge is a part-time sheriff; or the judge is a justice of the peace. Section 186(5) is amended so that the sheriff principal may allow an extension of the 14 day period on cause shown. A similar amendment is made to section 194(2) of the 1995 Act. Section 194(2) allows the sheriff principal to grant an extension of time limits in the same circumstances as specified in section 186(5) where an appeal by stated case is being prepared, adjusted and signed in terms of section 178 and 179 of the 1995 Act. Section 194(2) is amended to allow for the extension of time limits to be granted by the sheriff principal on cause shown.

Solemn cases

Section 26: Pre-trial time limits

157. Section 65(1) of the 1995 Act provides that an accused shall not be tried on indictment for any offence unless, where an indictment has been served on the accused in High Court cases, a preliminary hearing is commenced within the period of 11 months. It also provides that, in any solemn case, the trial must be commenced within the period of 12 months of the first appearance of the accused on petition in respect of the offence. Section 65(3) details the circumstances in which the court may extend these time limits. Section 65(3)(a) provides that, in High Court cases where the indictment has been served on the accused, a single judge of that court can, on cause shown, extend both the 11 and 12 month periods. In terms of section 65(3)(b), in any other case, the sheriff may, on cause shown, extend *only* the period of 12 months. This section amends section 65(3)(b) and provides that the sheriff may extend either or both of the periods of 11 and 12 months in High Court cases where the indictment has not been served.

Section 27: Obstructive witnesses

158. This section amends certain provisions relating to witnesses on bail in solemn proceedings as a result of the changes introduced by this Bill (see note on section 16 for similar provisions applying to summary proceedings – the aim is to ensure consistency between summary and solemn proceedings).

159. Subsection (2) inserts a new subsection 2(A) into section 90C of the 1995 Act and provides that, in proceedings for breach of bail, the fact that the witness was on bail, or was subject to a particular condition of bail, or that s/he failed to appear at a diet to which s/he had been cited, shall be held to be admitted unless challenged by a preliminary objection.

Section 28: Proceedings against bodies corporate

160. This section amends the provisions relating to the prosecution of bodies corporate found in section 70 of the 1995 Act. A definition of "representative" is inserted into section 70(8). The way in which a person proves that they are able to act as representative of a company is also changed and inserted as subsection (9). These changes bring both the solemn and summary provisions on this matter into line (see note on section 17 for similar provisions applying to summary proceedings).

Section 29: Petition proceedings outwith sheriffdom

161. This section inserts a new section 34A into the 1995 Act. Section 21(3) of this Bill provides for proceedings under summary procedure, in exceptional circumstances, to be initiated in sheriff courts outwith the sheriffdom where the alleged offence took place. This section makes equivalent provision in respect of an accused appearing on petition under solemn procedure. Jurisdiction for subsequent indictments is not affected by this section.

Miscellaneous

Section 30: Evidence on commission

162. Subsection (1) amends section 271I of the 1995 Act, which provides for the special measure for vulnerable witnesses of taking evidence by a commissioner.

163. The new section 271I(1A) as inserted provides that commissioner proceedings may take place by live television link. Section 271I(3)(a) of the 1995 Act is also amended by subsection (1) and makes consequential provision about restrictions on where the accused may be during such proceedings.

164. Subsection (1)(c) adds further provision to section 271I, and applies sections 274-275C and 288C-288F of the 1995 Act. Sections 274 and 275 contain certain prohibitions on the leading of evidence, and on questioning, which relates to the sexual history of the complainer in cases of certain sexual offences. In addition, sections 288C to 288F provide that, in certain cases, the accused is prohibited from conducting his or her own defence. Subsection (1)(c) provides that the protections available to witnesses in court proceedings as set out in sections 274 and 275 and sections 288C to 288F apply equally in commissioner proceedings when used as a special measure in respect of vulnerable witnesses. This subsection also provides that, where a person is charged with a sexual offence to which section 288C applies or an offence in relation to which an order has been made under section 288C(4), the commissioner shall be a judge or a sheriff. This is so that s/he has the power to rule on questions of admissibility of evidence and whether certain questions may be asked of the witness.

165. Subsection (2) amends section 272 of the 1995 Act in relation to the taking of evidence on commission generally. It provides that the protections set out in sections 274 and 275 and sections 288C and 288D of the 1995 Act apply to commissioner proceedings as they do to trial proceedings. As above, it also provides that, where a person is charged with a sexual offence to which section 288C applies or an offence in relation to which an order has been made under section 288C(4), the commissioner shall be a judge or a sheriff.

Section 31: Recovery of documents

166. This section introduces power to the sheriff court to grant orders for commission and diligence for the recovery of documents or for the production of documents. New section 301A is inserted into the 1995 Act. Orders for commission and diligence are more regularly used in civil proceedings; however, they are not unknown in the criminal context. Commission and diligence is a means of recovering documents which are required in respect of a litigation and are held in the hands of third parties. Currently the power to grant commission and diligence for the recovery of documents in criminal cases is only enjoyed by the High Court of Justiciary (*H.M. Advocate v. Ashrif* 1988 S.L.T. 567 refers). As a result a separate application has to be made to the High Court of Justiciary if commission and diligence is required during the course of a case in the sheriff or district court.

167. Although in practice little distinction may be made between the two orders, an order for the production of documents appears to be the most appropriate remedy when documents are sought by the accused and they are in the hands of the Crown (*McLeod v. H.M. Advocate (No. 2)*

1998 S.L.T. 233; *Maan v. H.M. Advocate* 2001 S.L.T. 408). The position in relation to a sheriff's power to grant an order for the production of documents is less clear than for commission and diligence. The provisions of section 31 of the Bill resolve any uncertainty in that regard.

168. Subsections (1), (2) and (3) confers a power on the sheriff court to grant orders for commission and diligence for the recovery of documents and orders for the production of documents. Sheriff courts are given this power in relation to: solemn proceedings in that sheriff court; and summary proceedings both in that court and in any JP court in that sheriff court's district.

169. Under subsection (4) applications for such orders cannot be made; in relation to solemn proceedings, until the indictment has been served on the accused; or s/he has been cited to answer an indictment; or in relation to summary proceedings until the accused has answered the complaint.

170. Subsection (5) provides that the grant or refusal to grant the application can be appealed to the High Court.

171. The available case law on the subject deals only with cases where the accused has sought to recover documents. There are other methods open to the prosecutor or police for the recovering information during the investigation of alleged offences. To that end it is envisaged that it will invariably be the accused who applies to the court for these orders. Subsection (7) enables the prosecutor to be heard at any application for an order under subsection (1) or at an appeal under subsection (5) whether or not the prosecutor is a party to the application or appeal. Therefore, where the accused seeks documents from another individual or organisation the prosecutor will have a right to make representations in relation to whether or not that order should be granted. By virtue of the fact that a third-party haver (i.e. the holder of the documents which are sought) will be a party to the application it would be competent for that haver to raise any objection to the granting of the application.

172. Subsection (8) provides that the powers of the High Court to grant the orders mentioned in subsection (3) are restricted to orders in connection with proceedings in the High Court. This is analogous to the position in civil proceedings where sheriffs deal with applications for commission and diligence relating to cases which are before that court and Court of Session judges deal with applications for commission and diligence in cases before that court.

Section 32: Power of court to excuse procedural irregularities

173. This section inserts section 300A into the 1995 Act and creates a new power for the court to relieve any party to a criminal case from failure to comply with certain procedural requirements. This power applies to summary and solemn cases. The power can be exercised whether the requirements are set out in statute (such as the 1995 Act) or whether they form part of the common law. An example of where this provision may be used would be where an accused appears on a number of complaints at different times and, in order that the complaints may be dealt with at the same time, the complaints are continued to the same date. On that date all the complaints are dealt with, with the exception of one which was inadvertently missed from the court list. This was not discovered until the next day. As the complaint did not call on the

date it was continued, the proceedings were deemed to have fallen at midnight on the date of the continuation. This provision would allow the prosecutor to apply to the court to seek an excusal of that irregularity and have the case called.

174. Subsection (1) sets out the circumstances in which the court can excuse a procedural irregularity. The irregularity must fall within the terms of subsection (3), and must also relate to the current criminal proceedings before the court. Either the prosecutor or an accused person can apply to the court to have a procedural irregularity excused. The court can exercise its power only where the conditions set out in subsection (2) apply.

175. Subsection (2) lists certain conditions of which the court must be satisfied before excusing a procedural irregularity under subsection (1). A procedural irregularity must have arisen from a mistake or an oversight, or another excusable reason, and the court must be satisfied in the circumstances of the case that its excusal would be in the interests of justice.

176. Subsection (3) describes the procedural failures that are covered by the court's power to excuse. Paragraphs (a) to (d) of subsection (3) list specific types of irregularity. The list is not intended to be exhaustive – paragraph (e) states that any other procedural requirement not complied with by the court, the prosecutor or the accused may be excused by the court, subject to the exclusions set out in subsections (4) and (5).

177. Subsection (4) expressly excludes irregularities arising from a period of detention of an accused person in custody which exceeds the relevant time limits contained in the 1995 Act. Therefore, for example, a failure on the part of the Crown to commence proceedings within the 40 day time limit in section 147 where the accused is being held in custody could not be excused under new section 300A. However, the general power in section 300A is without prejudice to any statutory provision that allows the court to extend a time limit (subsection (8)). Accordingly, in the above example, section 147(2) would continue to apply and an application could therefore be made under that provision for an extension of the time limit.

178. Subsection (5) expressly excludes irregularities relating to the admissibility or sufficiency of evidence, or any other evidential factor. For example the fact that evidence had been ruled as inadmissible because it was irrelevant could not be excused. Nor could a lack of corroboration (in terms of sufficiency of evidence) be excused.

179. Subsection (6) sets out the powers available to the court where it decides to excuse a procedural irregularity under subsection (1). Following an excusal, the court can make an order, as is necessary or expedient, for the purpose of restoring or facilitating the continuation of the proceedings as if the irregularity had never occurred, or protecting the rights of the parties to the case.

180. Subsections (8) & (9) make it clear that section 300A is to operate without prejudice to other parts of the 1995 Act which empower the court to cure defects in proceedings by, for example, allowing the court to extend a particular time period or limit, or any rule of law which allows departure from directory requirements to be excused.

PART 3 – PENALTIES

Sentencing powers

Section 33: Sheriff summary: common law offences

181. This section amends section 5(2)(d) of the 1995 Act by increasing the maximum sentence of imprisonment which can be imposed by a sheriff for a common law offence in a summary case from 3 months to 12 months. At present, section 5(3) of the 1995 Act provides that the maximum sentence of imprisonment for a second or subsequent offence involving violence or dishonesty is 6 months. This provision is repealed meaning that, in future, all common law offences will be punishable with a maximum custodial sentence of 12 months on summary conviction. The sentencing powers of the district court are unaffected.

Section 34: Sheriff summary: particular statutory offences

182. This section increases the maximum prison sentence for certain statutory offences. These offences attract a maximum sentence in excess of the present common law maximum, but below the proposed new common law maximum of 12 months. They are triable summarily only, so the penalties would not be altered by the provisions of section 35 of this Bill. Subsection (1) increases the maximum prison sentence for offences under section 41 of the Police (Scotland) Act 1967 from 9 to 12 months, and amends that Act accordingly. That section covers assaulting or otherwise impeding police officers in the course of their duty.

183. Subsection (2) increases the maximum sentence under section 37 of the Antisocial Behaviour (Scotland) Act 2004 to 12 months or a fine not exceeding the prescribed sum or both and abolishes the distinction in the maximum penalty between a first offence and a second or subsequent offence. Section 37 contains offences relating premises which are subject to a closure order.

184. Subsection (3) increases the maximum sentence under the Emergency Workers (Scotland) Act 2005, section 6, from 9 to 12 months or a fine not exceeding the prescribed sum or both. That section covers the offences created by that Act of assaulting or impeding emergency or health workers in the course of their duty.

185. Subsection (4) increases the maximum prison sentence under section 39 of the Fire (Scotland) Act 2005 from 9 to 12 months or a fine not exceeding level 4 on the standard scale or both. That Act is amended accordingly. That section covers assaulting or impeding those performing certain functions under that Act.

Section 35: Sheriff summary: other statutory offences

186. This section brings the maximum summary prison sentences for certain statutory offences into line with the new maximum sentence for common law offences set out in section 33 of the Bill.

187. Subsections (1), read with subsections (5) and (6), set out the new maximum, and define the penalty provisions that will be altered. Offences which will be affected are those which can

be tried under either solemn or summary procedure (sometimes referred to as "triable either way") and attract maximum prison sentences of less than 12 months on summary conviction. The new maximum summary penalty for such offences will be 12 months.

188. The effect of subsection (2) is that the statutes which create the affected offences are to be read subject to the amended summary sentencing limit.

189. Subsection (3) allows the Scottish Ministers to amend the maximum period of imprisonment specified in the statutory offences to which subsections (1) and (2) apply. This means that, in due course, textual amendment of the relevant statutes can take place, avoiding ongoing reliance on the general amendment. Subsection (4) allows the Scottish Ministers to amend certain provisions in enactments that contain powers to create offences. Where an enactment provides for the creation of offences punishable on both solemn and summary conviction, the maximum summary penalty may, by order, be increased to 12 months.

Section 36: JP court: power to increase penalties

190. This section gives powers to the Scottish Ministers to amend the maximum penalties available to the JP court. Ministers will be able to make similar changes which would apply to any remaining district courts by virtue of section 51(5) of the Bill.

191. Subsection (1) empowers Ministers to increase, by order, the maximum period of imprisonment, fine, or amount of caution available to JP courts for either common law offences or statutory offences.

192. Subsection (2) empowers Ministers to increase the maximum penalty available to JP courts in respect of any statutory offences.

193. Subsection (3) caps these powers. The effect of subsection (3) is that an order could empower the JP court to impose imprisonment for up to 6 months (but could also increase the limit to a period that is higher than the current maximum of 60 days but lower than 6 months).

Section 37: Prescribed sum

194. This section increases the prescribed sum from £5,000 to £10,000. The prescribed sum is the maximum amount the sheriff may impose for a common law offence and certain statutory offences under summary procedure.

Section 38: Compensation orders

195. This section amends section 249 of the Criminal Procedure (Scotland) Act 1995. That section prescribes and limits the circumstances in which a court can impose a compensation order on an offender. The purpose of the amendment is to extend the power of the court to impose compensation orders.

196. This section is also relevant to the operation of the new alternative to prosecution introduced in section 39 of this Bill – the compensation offer – as prosecutors are empowered to issue compensation offers in circumstances where a court could, on conviction, impose a compensation order.

197. The introduction of section 249(1)(b) of the 1995 Act permits compensation to be ordered by a court, or offered by a prosecutor, in circumstances where alarm or distress have been caused directly by the actions complained of. Currently, section 249(1) limits compensation orders to circumstances where personal injury, loss or damage is caused either directly or indirectly.

Penalties as alternative to prosecution

Section 39: Fixed penalty and compensation offers

198. This section provides considerable changes in procedures relating to existing alternatives to prosecution, and introduces a new alternative to prosecution, to be known as the compensation offer. It makes significant amendments to sections 302 and 303 of the 1995 Act, and introduces a number of new sections to that Act. Sections 302 and 303 deal with conditional offers of a fixed penalty by prosecutors (generally known as "fiscal fines").

Conditional offers – changes to procedures etc

199. Subsection (1)(a) amends section 302(2) of the 1995 Act, which covers the information which requires to be provided to the alleged offender in a conditional offer. The amendments take account of the revised procedure introduced by this Bill.

200. Subsection (1)(b) makes consequential amendments to section 302(4) of the 1995 Act, which covers the obligations on the clerk of court to notify the procurator fiscal whether or not the conditional offer has been accepted.

201. Subsection (1)(c) inserts subsections (4A) - (4C) into section 302 of the 1995 Act. This effects a change to the way in which fixed penalties are administered. Acceptance of a conditional offer of a fixed penalty will now be either by making any payment in respect of the offer, or by taking no action in respect of the offer. Currently, fixed penalties require the suspected offender to take positive steps to accept it. The terms of these new subsections render subsections (5) and (6) of section 302 redundant, and these are repealed by subsection (1)(d) of this section.

202. Subsection (1)(e) amends the maximum level of a conditional offer, from level 1 on the standard scale (presently £200) to level 2 (presently £500).

203. Subsection (1)(f) inserts a new subsection (7A) into section 302 of the 1995 Act. This permits the Scottish Ministers, by order, to prescribe circumstances in which, and the mechanism by which, discounts can be applied to the payment of accepted conditional offers. Ministers can also fix the amount of discount to be applied. Currently, there is no basis for discounting a fixed penalty.

204. Subsection (1)(h) inserts a new subsection (8A) into section 302 of the 1995 Act. This raises a rebuttable presumption that the alleged offender has received a conditional offer if it is sent to: the address given by the alleged offender in relation to a recall application under section 302C(1) (see paragraphs 215 to 220 below); or to any address which the alleged offender has given to the clerk of court or the procurator fiscal in respect of that offer. Subsection (8B), in turn, raises a presumption in relation to the operation of section 141(4) of the 1995 Act, which covers the citation of accused persons to court. It provides that citation of the accused will be presumed to have been successfully effected if sent to the same address at which it can be proved the accused received a conditional offer, or at another address given by the accused in connection with that offer.

205. Subsection (1)(i) amends section 302(9) of the 1995 Act. It extends the range of offences for which conditional offers can be made. At present a conditional offer can be made in respect of any offence which can be tried in the district court. It will now be competent to make a conditional offer in relation to any offence which can be tried summarily.

New section 302A - compensation offer

206. Section 39(2) introduces three new sections into the 1995 Act (sections 302A to 302C). The first of these sections, 302A, creates compensation offers by the procurator fiscal and provides a mechanism for their operation. Many of the procedures are identical to, or similar to, those made for the operation of the new system which will apply to conditional offers of a fixed fine.

207. A procurator fiscal is permitted by section 302A(1) to send a compensation offer to an alleged offender where it seems that a relevant offence has been committed. A relevant offence is defined in section 302A(11) as an offence which can be tried summarily, and for which a court could competently make a compensation order (section 38 and paragraphs 195 to 197 above refer). The offer document is required by section 302A(2) to give the accused similar information to that given in a conditional offer of a "fiscal fine".

208. Section 302A(3) provides that a compensation offer can be made in respect of more than one relevant offence. Section 302A(4) obliges the clerk of court to advise the procurator fiscal whether any payment has been made in respect of the offer or whether notice has been given that the offer has been rejected. Sections 302A(5) and (6) provide that acceptance of an offer is deemed either if payment is made to the offer, or if the alleged offender takes no action to expressly reject it.

209. Section 302A(7) provides that if a compensation offer is accepted no prosecution can take place, and no conviction will be recorded.

210. Section 302A(8) and (9) provide that the maximum amount of a compensation offer is to be set by the Scottish Ministers, but that it is not to exceed level 5 on the standard scale (presently £5000).

211. Sections 302A(10) and 302A(11) make provision for presumption of service of further compensation offers and in respect of citations served in terms of section 141(4) of the 1995 Act. These are the same as those described at paragraph 204 above.

New section 302B – combined fixed penalty and compensation offer

212. Section 302B makes provision to allow prosecutors to make a conditional offer combining elements of both a fine and compensation. Any such offer will be regarded as a "combined offer".

213. Section 302B(3) sets out the additional information which requires to be provided in a combined offer, which in terms of section 302B(2) requires to be in a single notice.

214. Section 302B(4) provides that acceptance of part of any such offer will be regarded as applying to the whole offer. This guards against the possibility that, faced with two separate offers of a fine and compensation for the same incident, the offender will accept one and reject the other.

New section 302C – recall of fixed penalty or compensation offer

215. Section 302C provides a mechanism for recalling a "fiscal fine" offer or compensation offer, where the alleged offender has taken no action in respect of the offer and it is deemed to have been accepted. Section 302C(2) provides that the ground for recall of an offer is that the alleged offender did not receive the original offer.

216. Section 302C(2), however, provides that the only valid reason for seeking recall of deemed acceptance is where the alleged offender claims that s/he did not actually receive the offer.

217. Section 302C(3) provides that where the alleged offender wishes to apply to have the deemed acceptance recalled, s/he must apply to the clerk of court within certain time limits. In terms of section 302C(4), on receipt of an application for recall the clerk of court may either uphold or recall the offer.

218. Section 302C(5) gives the offender the right to apply to the court which is specified in the offer (and will be the court in which the clerk making a decision under section 302C(3) will work) for review of the clerk's decision, and section 302C(6) gives the court power, in turn, to uphold or quash the clerk's decision. Section 302C(7) provides that the court's decision is final.

219. The clerk of court, in turn, is obliged by section 302C(8) to inform the procurator fiscal of a request for recall, an application for review of the clerk's decision, and any decision taken either by the clerk or the court in connection with the application.

220. Section 302C(9) provides that for the purposes of considering an application for recall the procurator fiscal can certify when the offer was sent.

Further provisions on enforcement

221. Section 39(3) makes further provision in relation to enforcement of alternatives to prosecution, and amends section 303 of the 1995 Act accordingly.

222. Subsection (3)(a) provides that, where an alternative to prosecution has been accepted, any outstanding amount is to be treated, for enforcement purposes, as if it were a fine imposed by the court.

223. Subsection (3)(b) provides that no action is to be taken to enforce a "fiscal fine" or compensation offer where acceptance has been deemed by the alleged offender's lack of action, unless a notice is sent to the accused explaining that enforcement action is to be taken, and outlining the recall procedure.

Section 40: Work orders

New section 303ZA – Work orders

224. This section inserts a new section 303ZA into the 1995 Act. It creates a new alternative to prosecution – the "work order" (which has also been referred to as the "fine on time" or "community fiscal fine").

225. Section 303ZA(1) empowers a procurator fiscal to make a 'work offer' to an alleged offender who appears to have committed a relevant offence (defined in subsection 303ZA(15) as one which is triable summarily). This offer will give the alleged offender the option of performing a period of unpaid work where a monetary penalty such as a "fiscal fine" or a compensation offer are not deemed appropriate.

226. Section 303ZA(2) sets the minimum (10 hours) and maximum (50 hours) number of hours work that can be offered under a work offer. Section 303ZA(3) outlines the information which will require to be contained on the notice of offer. In many ways this is similar to the information which requires to be on the notice of offer of the two other alternatives to prosecution which are described above. The circumstances of the alleged offence, the amount of work which will require to be completed, the date by which the work will require to be completed, and the consequences of acceptance and completion of the offer all require to be in the offer.

227. Section 303ZA(4) permits the work offer to be made in respect of more than one offence, and subsections 303ZA(5) and (6) provide details on how the alleged offender accepts the offer, and the obligations of the clerk of court to notify the procurator fiscal of whether the offer has been accepted or not. Unlike the new system for "fiscal fines" and compensation offers, the work offer requires to be positively accepted by the alleged offender.

228. Section 303ZA(7) provides that if the offer is accepted, the procurator fiscal can then make a work order against the alleged offender. On doing so, the procurator fiscal must send a notice to the accused that a work order has been made, containing details of the amount of work to be carried out and details of the person who is to supervise performance of the order

(subsection 303ZA(8)). Subsection 303ZA (9) obliges the procurator fiscal to advise the clerk of court and the supervising local authority of the imposition of an order.

229. Sections 303ZA(10), 303ZA(11) and 303ZA(12) deal with the manner in which the supervising officer's duties are to be discharged. The officer is to determine the nature, time and place of the work to be done, and give directions to the alleged offender regarding its performance. The officer is also to provide the procurator fiscal with details of the performance of the order. The purpose of this last provision is to allow the procurator fiscal to consider whether, in the event that the order is not completed satisfactorily, further action is appropriate. The officer is under a duty, as far as possible, not to direct the alleged offender to carry out work which would hamper the alleged offender's attendance at work or education, or which would conflict with the alleged offender's religious beliefs.

230. Section 303ZA(13) provides that where the offender completes the work required in the order s/he will not face prosecution for the alleged offence. In the event that the entire order is not completed satisfactorily, the prosecutor will have the option of court proceedings, even if some work has been carried out under the order.

231. Sections 303ZA(14) and 303ZA(15) gives the Scottish Ministers a regulation making power to make specific provision in relation to specific aspects of a work orders as set out in subsection (1). In particular the Scottish Ministers may specify what kind of work may or may not be undertaken.

232. Subsection 303ZA(14) makes provision for citation of the alleged offender in subsequent prosecution. The position is similar to that for "fiscal fines" and compensation offers. Citation will be presumed to have taken place if it is effected at the address at which the alleged offender is proved to have received an offer, or any other address provided by the alleged offender.

Section 41: Disclosure of previous offers

233. This section amends section 69 (notice of previous convictions), section 101 (previous convictions: solemn proceedings), and section 166 (previous convictions: summary proceedings) of the 1995 Act, and makes provisions governing the circumstances in which an offer of an alternative to prosecution can be disclosed to the court. To all intents and purposes the amendments to each section have an identical effect.

234. The primary purpose of these amendments is to allow the prosecutor to include in any notice of previous convictions, whether in a solemn or summary case, details of an alternative to prosecution which has been accepted (completed in the case of a work order) by the alleged offender in the two years preceding the date of the new offence under consideration.

235. In the case of the financial alternatives to prosecution – the "fiscal fine" and the compensation offer – this applies whether the offer has been accepted by payment having been made, or whether acceptance has been deemed by the alleged offender taking no action in respect of the offer.

236. It is not intended that accepted "fiscal fines" or compensation offers, or completed work orders, should be regarded as criminal convictions for this or any other purpose.

237. In addition, the statute will now explicitly permit prosecutors, on conviction for an offence where an offer of an alternative to prosecution was made, to advise the court of the terms of any such offer.

Section 42: Time bar where offer made

New section 136B – time limits where fixed penalty offer etc. made

238. This section inserts a new section 136B into the 1995 Act. The purpose of this section is to alter the operation of time bar in statutory cases where an alternative to prosecution has been offered. It is intended that this will avoid the situation where the time spent in offering an alternative which is then declined makes it difficult or impossible to take proceedings within statutory time limits.

239. Section 136B applies to conditional offers, compensation offers and work offers. Section 136B(1) provides that in connection with conditional offers and compensation offers, for the purpose of calculation of any period of time bar, the period between the date of any offer of an alternative, and the date of refusal of the offer or date of recall of deemed acceptance, is to be disregarded.

240. In the case of work offers, the time between offer and refusal is to be disregarded. In addition, where the offer is accepted but not completed the time between the date of the offer and the date specified for completion of the order is to be disregarded.

241. Section 136B(2) provides that a prosecutor can certify the period of time which is to be disregarded for these purposes.

Enforcement of fines etc.

Section 43: Fines enforcement officers and their functions

242. This section amends the 1995 Act to include new sections 226A to 226I. These introduce new arrangements for the enforcement of fines and other financial penalties, including provision for the appointment of fines enforcement officers (FEOs), who will provide information and advice to the offender in relation to payment of the fine and will also have new sanctions to use against offenders who default in payment of their fines or penalties.

New Section 226A – Fines enforcement officers

243. Subsection (1) makes provision for a new post of fines enforcement officer. FEOs will undertake a number of enforcement related duties previously undertaken by the courts, such as dealing with applications for further time to pay. They will also be responsible for a range of enforcement activity. The FEO will be an officer of the Scottish Court Service (SCS), an agency of the Scottish Executive.

244. Subsection (2) sets out the core functions of FEOs. These are

- to provide information and advice to offenders about payment of fines or penalties, and
- to secure compliance with the terms of an enforcement order made under section 226B.

Subsection (4) empowers the Scottish Ministers to make further provision by regulation as to FEOs and their functions. In due course, this could be used to give FEOs additional functions or to modify the exercise of existing functions. The regulations will be subject to affirmative procedure.

New Section 226B – Enforcement orders

245. Subsections (1) and (2) give the court discretion to make an enforcement order in relation to a fine. The expectation is that the court will make an enforcement order when considering whether to grant time to pay under section 214 or 215 of the 1995 Act. However, the court is not required to make an order if it does not consider that an order would be appropriate.

246. Subsections (4) and (5) relate to the circumstances in which a person has accepted a fixed penalty offer or compensation offer as an alternative to prosecution. An enforcement order may be made by the court in relation to the payment of these penalties on the application of the clerk of court in the absence of the offender.

247. The enforcement order, a copy of which will be sent to all offenders, imposes a statutory requirement to pay the fine or penalty as specified in the order. The order will also contain certain information, as set out in subsection (6), including

- details of the fine or penalty;
- the arrangements for making payment (including the time for payment and, if applicable, the number of instalments permitted by the court);
- contact details of the fines enforcement officer; and
- information about the effect of the order in the event that the offender defaults on payment of the fine.

248. The sanctions for non – compliance, as detailed in new sections 226D, 226E and 226F include seizure of an offender's motor vehicle; a deduction from benefits order; earnings arrestment; and arrestment of an offender's bank or building society account. The enforcement order empowers the FEO to apply these sanctions, subject to the provisions of sections 226D to 226F.

249. Subsection (7) prohibits the court from imposing an alternative period of imprisonment or dealing with applications for further time to pay for as long as an enforcement order has effect. The order will cease to have effect if the penalty is fully paid or the court decides to revoke the order.

New Section 226C – Variation for further time to pay

250. One of the core functions of the FEO (section 226A (1)(a)) is to provide information and advice to offenders as regards payment. The FEO will make contact with the offender following the making of an enforcement order and will set out the date or dates by which payment is due.

251. However, section 226C empowers the FEO to vary the arrangements for payment. Subsection (3) provides that an application to vary arrangements may be made orally or in writing. The FEO will, as provided in subsection (4), notify the offender of the decision to grant or refuse the application. Section 226H allows an offender to apply to a court for a review of a decision of a FEO regarding the variation of an enforcement order.

New Section 226D – Seizure of vehicles

252. This section empowers a FEO to issue a 'seizure order' to immobilise and impound an offender's motor vehicle. Subsection (4) requires the FEO to notify the offender that a seizure order has been made. Subsection (9) prohibits the seizure of a vehicle used by or primarily for carrying disabled persons.

253. Subsections (5) and (6) set out the process to be followed where the fine or penalty remains unpaid following seizure of a motor vehicle, and the powers available to the court. These include making an order for the sale of the vehicle, and applying the proceeds towards the unpaid fine or penalty.

254. Regulations may be made under subsection (10) in order to provide greater detail about seizure orders, including the circumstances in which they may and may not be made. The intention is to pilot this new sanction, before national roll-out is considered. Subsection (11) provides details of the scope of the regulations.

New Section 226E - Deduction from Benefits

255. Section 226E enables the FEO to request the court to make an application for a deduction from benefits to be made from an offender, for the purpose of obtaining payment of a fine or penalty.

New Section 226F – Powers of Diligence

256. Section 226F provides that, when making an enforcement order, the court must also grant warrant for civil diligence. This warrant will authorise the FEO to execute arrestment of earnings and funds in bank accounts. The purpose is to obtain the amount of the penalty which has not been paid. The diligence powers of the FEO are subject to regulations which the Scottish Ministers may make about the circumstances in which diligence powers may be exercised and the application of other law relating to diligence. The intention is that any existing and new legislation relating to diligence (such as the Debtors (Scotland) Act 1987 and relevant provisions of the Bankruptcy and Diligence Bill) will apply to FEOs when they exercise diligence powers, subject to such modifications as may be necessary.

New Section 226G – Reference of case to court

257. Subsections (1) and (2) make provision for any outstanding fine to be referred back to the court. Referral can take place where the FEO has formed the view that the fine or penalty, or the unpaid balance, is unlikely to be paid or where, for any other reason, the FEO considers it appropriate (for example, where the offender has failed to co-operate with the FEO). In these circumstances the FEO will, as outlined in subsections (3) to (5), provide a report to the court on the circumstances of the case.

258. Subsections (6) to (9) provides details of the procedure to be followed by the court on receipt of a report and reference from the FEO. This will involve an enquiry, in the offender's presence, into the reasons for failure to pay the fine and penalty. The court is given a range of disposal options following such an enquiry. These include revoking the enforcement order and dealing with the offender as if the order had not been made. This could mean imposing a period of imprisonment.

New Section 226H – Review of actions of FEO

259. This section provides that an offender may apply to the court for a review of a decision of a FEO in relation to an application for variation for further time to pay, or an order to immobilise and impound the offender's motor vehicle. The application must be made within 7 days of being notified of the decision relating to further time to pay or the making of a seizure order. When determining the application, the court can confirm, alter or quash the decision of the FEO or make any other order that it considers appropriate.

New Section 226I Enforcement of fines etc.: Interpretation

260. This section sets out certain definitions for terms used in sections 226A to 226H, and describes the penalties to which these provisions apply. There is an order making power to allow additional penalties to be added to the definition of "relevant penalty". This would have the effect of increasing the range of penalties for which the FEO could have responsibility.

Breach of post-conviction orders

Section 44: Probation and community service orders

261. The purpose of this section is to provide that those who are in alleged breach of a probation or community service order will be provided with a copy of the report to the court detailing the grounds of the alleged breach. Service of the copy report is to be in accordance with provisions in the Act of Adjournal, and provision is made for postal service.

262. Subsection (1) makes the change for probation orders; and subsection (2) extends it to community service orders. Sections 232 and 239 of the 1995 Act are amended accordingly.

Section 45: Restriction of liberty orders

263. The purpose of this section is to permit breach of a restriction of liberty order to be proved by the evidence of one witness. This provision brings proof of breach of such orders into

line with proof of the breach of probation, community service, drug treatment and testing, and supervised attendance orders. Section 245F of the 1995 Act is amended accordingly.

PART 4 – JP COURTS AND JPS

Establishing JP courts etc.

Section 46: Establishing JP courts

264. This section imposes a general duty on the Scottish Ministers to make provision for summary criminal courts. The Scottish Ministers are also given the power to establish JP courts by order, with reference to particular sheriff court districts. It is intended that JP courts will eventually replace district courts and will be established on a phased basis, sheriffdom by sheriffdom, for the purpose of delivering a unified summary criminal courts administration under the administration of SCS.

265. Before making an order establishing JP courts, the Scottish Ministers must consult the sheriff principal for the relevant sheriffdom. There is a presumption that there will be at least one JP court established for each sheriff court district, except where Scottish Ministers determine that a JP court is not necessary. Currently there are no district courts in the sheriff court districts of Lerwick, Orkney and Lochmaddy. It is not anticipated that any JP courts will be established in these districts.

266. Subsection (5) requires Scottish Ministers, in deciding whether a JP court is necessary, to take account of the amount of summary criminal business and the capacity of other JP or sheriff courts in the sheriffdom.

267. Subsection (6) provides that, where JP courts have been established, Scottish Ministers may subsequently, by order, provide for the relocation or disestablishment of a JP court. Subsection (7) provides that, before making such an order, Scottish Ministers must consult the sheriff principal for the relevant sheriffdom.

Section 47: Making provision for JP courts

268. This section imposes a duty on Scottish Ministers to make provision for the organisation and administration for JP courts. The Scottish Ministers are also responsible for providing suitable and sufficient premises and facilities.

269. In making such provision, the Scottish Ministers may require local authorities to let or sub-let their premises to the Scottish Ministers for the purposes of the JP court, or to make their premises available for use as a JP court (e.g. through a licence arrangement). The level of rent that is payable, and the other terms of any lease, will be subject to agreement. Any dispute that the parties are unable to resolve is to be determined by an arbiter (subsection (6)). These provisions should be read in conjunction with section 52 which confers a power on the Scottish Ministers to transfer property that is used for or in connection with a district court.

Section 48: Administration of JP courts

270. This section places the day-to-day responsibility for the efficient administration of JP courts in the sheriffdom on the sheriff principal. In exercising this responsibility, the sheriff principal may issue administrative directions to those involved in the administration of JP courts (other than the Scottish Ministers). The Scottish Ministers may also issue administrative directions for the purpose of ensuring the efficient administration of JP courts, subject to prior consultation with the sheriff principal.

Section 49: Area and territorial jurisdiction of JP courts

271. The territorial jurisdiction of JP courts is set out in subsection (1), which provides that a JP court may try offences committed within the sheriff court district in which it is located, or in any other sheriff court district within the sheriffdom. This is similar to the territorial jurisdiction of the sheriff court. Further provision relating to the jurisdiction of JP courts is contained in sections 9 and 10 of the 1995 Act, as modified by paragraphs 7 and 8 of the schedule to the Bill.

272. Subsection (4) provides that a JP or stipendiary magistrate may exercise their judicial or signing functions at any place within the sheriffdom where s/he is appointed. Subsection (5) further provides that a JP or stipendiary magistrate may sign, at any place in Scotland, a warrant, judgement, interlocutor or other document relating to criminal proceedings within the sheriffdom.

273. Subsection (6) is a transitional provision. It ensures that, after a JP or stipendiary magistrate has been appointed for a sheriffdom (in terms of section 54(2) of the Bill), s/he may continue to work within any remaining district court that lies wholly or partly within the sheriffdom.

Section 50: Constitution and powers etc. of JP courts

274. At present, sections 6 to 8 of the 1995 Act set out the constitution and powers of district courts. Subsection (1) provides that these provisions will apply to JP courts. The provisions are modified at paragraph 7 of the schedule to the Bill.

275. Section 6(2) of the 1995 Act provides that a district court may be constituted by one or more JPs. Some district courts sit with benches of 3 JPs, in others only 1 JP presides. Section 6(2) is modified in the schedule to the Bill and, as modified, will allow the JP court to be constituted by one or more JPs. However, section 50(2) provides the Scottish Ministers with the power to amend section 6(2) of the 1995 Act, by order, to provide that a JP court may be constituted by one JP only.

276. This section also makes provision relating to the staff of JP courts, including clerks of court. The clerk of a JP court will be a solicitor or advocate, and will provide legal advice to the court. Clerks of court and other staff will be appointed and employed by Scottish Ministers (in practice they will be employees of the SCS).

Section 51: Abolition of district courts

277. This section sets out the process for the disestablishment of district courts. The intention is that all of the district courts in a particular sheriffdom will be disestablished at the same time as JP courts are established in a sheriffdom under section 46 of the Bill. The Scottish Ministers must consult the relevant sheriff principal and local authority before making an order to disestablish a district court.

278. The existing legislation governing the operation of district courts is the District Courts (Scotland) Act 1975. Subsection (5) provides for this legislation to be repealed by the Scottish Ministers by order. The intention is that the legislation will be repealed for a particular sheriffdom at the same time as the district courts are disestablished and the JP courts are established.

279. Subsections (5) to (9) contain transitional provisions for remaining district courts. Legislation relating to JP courts (including the provisions in this Bill relating to matters such as the sentencing powers of the JP court) may be applied to district courts pending their disestablishment.

Section 52: Transfer of staff and property

280. This section provides that, alongside an order for the disestablishment of district courts, the Scottish Ministers will make a scheme for the transfer of the employment of certain members of district court staff to the Scottish Administration. The scheme may apply to some or all staff who work in the district court that is being disestablished. It may, by way of example, apply only to staff that spend more than a particular proportion of their working time on district court duties. Subsection (4) makes it clear that the Transfer of Undertakings (Protection of Employment) Regulations 1981 (S.I. 1981/1794) will apply to staff transferred under this section.

281. Subsections (5) to (8) make provision for the transfer to, and vesting in, Scottish Ministers of district court properties and liabilities when district courts are disestablished under section 51(1). Subsection (6) reflects that fact that the Scottish Ministers are not required to transfer all district court properties to themselves. Some properties may remain with the local authority, depending on the circumstances of each case. Subsection (8) provides that a certificate issued by Scottish Ministers is conclusive evidence of the transfer of any such property or liability.

Section 53: Transitional arrangements for proceedings

282. This section makes provision for the transfer of both continuing and recently completed district court proceedings, including related records, productions and other documents, to the appropriate JP court. Recently completed proceedings are proceedings that have been completed not more than 5 years before the date on which the district court in question is disestablished.

283. The sheriff principal for the sheriffdom in which the district court is located will determine the relevant JP court to which proceedings and records should be transferred.

Appointment of JPs etc.

Section 54: Appointment of JPs

284. This section provides for the appointment of justices of the peace.

285. Subsection (1) makes it clear that JPs will be appointed by Scottish Ministers on behalf of and in the name of the Queen. This provision is essentially the same as the existing provision which provides for the appointment of JPs – section 9(1) of the District Courts (Scotland) Act 1975 (the 1975 Act).

286. Subsection (2) indicates that JPs are to be appointed to a sheriffdom. This provision should be read alongside section 49(4) of the Bill which makes it clear that they will be able to perform judicial functions (i.e. sit on the bench) in any part of the sheriffdom to which they are appointed. Under sections 9(1) and 26(1) of the 1975 Act, JPs are currently able to perform judicial functions within the local authority area to which they are appointed. The Bill therefore has the effect of widening the geographical area within which JPs can act.

287. Subsection (3) states that a JP's appointment is for a term of five years. Under the 1975 Act, there was no limit to the length of a JP's appointment (although all "full justices", who were eligible to sit on the bench, had to become "signing justices" on the supplemental list when they reached the age of 70, and therefore ceased to be able to sit on the bench).

288. Subsection (5) requires the Scottish Ministers to comply with any orders that they make as to procedure and consultation for appointing JPs. This provision reflects the terms of section 9(8A) of the 1975 Act, which was inserted into the 1975 Act by the Bail, Judicial Appointments etc (Scotland) Act 2000. No regulations have been made under section 9(8A) of the 1975 Act. Regulations under this subsection are likely to make it clear that candidates will be recommended to Scottish Ministers for appointment as JPs, prior to their first five year appointment, by Justice of the Peace Advisory Committees (JPAC), chaired by the sheriff principal of the relevant sheriffdom.

289. Further to subsection 6(a), each JPAC will have a mixture of lay members and JPs. The order is also likely to make it clear that each JPAC should agree protocols with the Judicial Appointments Board for Scotland, setting out how it will recruit JPs. These protocols are likely to deal with matters such as the way in which JP vacancies should be publicly advertised.

290. Subsections (7) and (8) deal with existing justices of the peace. Subsection (7) makes provision for their appointment to be terminated on a date specified by order. However, the effect of subsection (7)(b) and (8) is that any full JPs are to be appointed as a JP under subsection (1) unless they decline their appointment. This provision will ensure that all existing JPs become subject to the new arrangements for JPs set out in this part of the Bill. The intention is that the Executive will write to all current JPs several months before their appointment is due to be terminated. It will explain that their appointment will cease on a given date, but state that they will be appointed as JPs providing they agree to meet certain conditions (these are dealt with in the next section). JPs who agree to this will return a form to the Executive, and will be reappointed as JPs. Their new appointments will start the day their old appointments cease.

Section 55: Conditions of office

291. This section sets out the conditions which may be attached to the appointment of justices of the peace.

292. Subsection (1) states that somebody is not to be appointed as a JP unless they ordinarily live in, or within 15 miles of, the sheriffdom to which they are being appointed. This subsection only applies to a JP's first appointment. A JP who moved outside of the sheriffdom during the course of their five year appointment, but who still undertook duties on the bench within the sheriffdom to which they were appointed, would be eligible for reappointment at the end of five years, but could be subject to a recommendation against reappointment made by the sheriff principal in terms of section 57(3)(c).

293. The effect of subsection (1) is slightly different to that of sections 9(3) and 9(4) of the 1975 Act. These provisions prevent a JP from holding office, or acting as a JP, unless they live in or within 15 miles of their local authority area. They also allow Scottish Ministers to waive this requirement if they consider it to be in the public interest to do so. The new provisions remove this element of discretion at the time of a JP's appointment.

294. Subsection (2) states that the appointment of JPs shall be made subject to conditions relating to training, appraisal and their availability to meet the business needs of the relevant part of their sheriffdom. The intention is that JPs will need to accept these conditions prior to being appointed. Subsection (3) makes it clear that the sheriff principal will assess the likely court business in their sheriffdom. The sheriff principal's assessment will be referred to when setting conditions on JPs' required availability.

295. Subsections (4) and (5) require the Scottish Ministers to pay allowances to JPs according to a scheme devised by them. These allowances are likely to cover reimbursement for expenses incurred in fulfilling the duties of a JP, and also reimbursement for any loss of earnings as a result of undertaking a JP's duties. Under section 17(6) of the 1975 Act, allowances to JPs are currently paid by local authorities.

Section 56: Training and appraisal of JPs

296. This section allows Ministers to make provision in relation to the training and appraisal of JPs. It also allows them to establish committees which will have responsibility for key functions relating to training and appraisal.

297. Under the 1975 Act, Scottish Ministers have the power to make schemes and provide courses for the instruction of justices of the peace. They do not however have any powers relating to appraisal.

298. In practice, the Executive envisages that the training and appraisal of JPs will come under the overall oversight of the Lord President. That is the reason for the provisions at subsection (2) and (4).

299. It is likely that all new JPs will be required to undergo a mandatory induction scheme. The Executive currently envisages that the content of this scheme will be drawn up or approved by the Judicial Studies Committee, a non-statutory body which organises training courses for the Scottish judiciary. The scheme would then be issued or approved by the Lord President.

300. The Executive also envisages that all existing JPs will be required to undertake a minimum amount of ongoing training each year, including being required to undertake refresher training within two years of taking up their new five year appointments. Again, it is likely that the Judicial Studies Committee would draw up or approve these ongoing training requirements, which would then be issued or approved by the Lord President.

301. With regard to appraisal, the Executive envisages that JPs will be appraised against a competence framework which would be drawn up or approved by the Judicial Studies Committee. This competence framework would then be approved by the Lord President.

302. Subsection (3) allows the order in relation to training and appraisal to include the power to establish committees. These committees will have the power to devise or adopt appropriate training and appraisal courses and systems; to ensure that these courses or systems are delivered or used; and to provide advice about training and appraisal. These committees' composition and functions will be set out in more detail in the draft order. It is likely that groups in each sheriffdom, mainly or entirely composed of JPs, will be given responsibilities relating to the delivery of appraisal and training within the sheriffdom. In doing so, they will effectively assume the responsibilities for training that justices' committees currently have under section 16(1)(c) of the 1975 Act.

Section 57: Reappointment of JPs

303. Subsection (1) makes it clear that a JP is eligible for reappointment on the expiry of their five year appointment. A JP who has resigned from office is also eligible to be reappointed.

304. The effect of subsection (2) is that a JP whose five year appointment has finished shall be reappointed unless certain circumstances apply. The subsection also sets out what those circumstances are.

305. Subsection (2)(d) makes it clear that a JP shall not be reappointed if the sheriff principal for the JP's sheriffdom recommends to Scottish Ministers that the JP should not be reappointed. Subsection (3) sets out the grounds on which the sheriff principal may make such a recommendation. They are that the JP has inadequately performed the functions of a JP; that the JP has, without good reason, failed to meet requirements under section 55(2) relating to training, appraisal or availability to meet the business needs of the relevant part of their sheriffdom; that the JP no longer lives within fifteen miles of the sheriffdom to which they are appointed; or on such other ground as the sheriff principal considers relevant (one example of this might be if the JP had been convicted of a number of motor offences during the previous five years).

306. The provision at subsection 3(a) relating to inadequate performance of the functions of a JP is intended to allow a sheriff principal to recommend against reappointment if, for example, a JP's appraisals had demonstrated that they were not performing adequately.

Section 58: Removal of JPs

307. This section deals with the circumstances in which a JP can be removed from office. At present, section 9A of the 1975 Act deals with the removal of a full JP from office.

308. In keeping with the existing law, subsections (1) and (2) provide that a JP may only be removed from office during their five year term of appointment by order of a tribunal appointed by the Lord President of the Court of Session.

309. Subsection (5) makes it clear that a tribunal appointed by the Lord President of the Court of Session can order a JP's removal on only a limited number of specified grounds. Subsection (5) also states that the tribunal's investigations are to be carried out at the instance of the sheriff principal for the sheriffdom to which the JP is appointed. This represents a change from section 9A(2) of the 1975 Act, which provides that the tribunal's investigation is to be carried out at the request of the Scottish Ministers.

310. The combined effect of subsection (4)(a) and subsection (5) is to ensure that the sheriff principal who chairs the tribunal and sheriff principal who requests the tribunal's investigation will be different persons. Under sections 9A(2) and 9A (4) of the 1975 Act, tribunals are requested by Scottish Ministers and chaired (unless the Lord President decides otherwise) by the sheriff principal of the JP's sheriffdom. Under subsections (4)(a) and (5) of this section, tribunals will be instigated by the sheriff principal of the sheriffdom to which the JP is appointed, and chaired by a different sheriff principal.

311. Subsection (5)(b) states that a possible ground for removing a JP is that they have inadequately performed the functions of a JP. As with the provision at section 57(3)(a), it is anticipated that the tribunal may make this finding if, for example, a JP's appraisals had demonstrated that they were not performing adequately as a JP. It is envisaged that "inadequate performance" will constitute a lower test than that of "inability" as a ground for removal.

312. Subsections (6) and (7) allow the Scottish Ministers to make provision by order regarding the tribunal. It is likely that orders regarding the conduct of the tribunal will be similar to the existing Justices of the Peace (Tribunal) Regulations (Scotland) 2001**,** although they will take account of the differences, as outlined above, between the provisions of this Bill and those of the 1975 Act which relate to tribunals.

313. Subsection (6)(b) allows any order made by Scottish Ministers to authorise a specific body or class of persons to recommend to a sheriff principal that s/he instigate the establishment of a tribunal. This means that, for example, any committee established to oversee the appraisal of JPs in a sheriffdom under section 56(3) of this Bill could also be authorised to recommend to a sheriff principal the instigation of a tribunal in order to investigate whether someone has inadequately performed their functions as a JP.

314. Subsection (8) makes it clear that anybody who is removed from office as a JP is ineligible for reappointment as a JP. This provision reflects the terms of section 9A(10) of the 1975 Act.

Section 59: Disqualification of solicitors who are JPs

315. This section disqualifies a solicitor who is a JP from acting in any proceedings in a JP court in the sheriffdom to which they have been appointed as a JP. Subsection (2) extends this disqualification to the solicitor's staff and – where the solicitor is a partner of a law firm – to any other partner or member of staff of the partnership. This provision reflects the terms of section 13 of the 1975 Act.

Section 60: Disqualification where sequestration or bankruptcy

316. This section mirrors section 13A of the 1975 Act. It prevents someone from being appointed as a JP or, if they have been appointed, from acting as a JP, if their estate has been sequestrated in Scotland or if the person has been adjudged bankrupt outside Scotland. The disqualification ceases, however, if the circumstances set out in subsections (2) and (3) apply.

317. Under section 57(2)(c) of this Bill, a JP whose estate has been sequestrated in Scotland, or who has been adjudged bankrupt, may not be reappointed as a JP at the end of their five year term of appointment.

Section 61: Appointment of stipendiary magistrates

318. This section provides for the appointment of stipendiary magistrates. It will replace section 5 of the 1975 Act. Stipendiary magistrates differ from lay justices since they are professional judges who must have been a solicitor or advocate for at least five years. Although all local authorities, with the approval of Scottish ministers, currently have the power to appoint stipendiary magistrates, only Glasgow City Council currently does so. Stipendiary magistrates have the same criminal jurisdiction as a sheriff when sitting summarily, which means that they can sentence people for up to three months in custody (or six or nine months under certain circumstances) and fine them up to £5,000. Under the provisions of sections 33 to 35 of this Bill, they will be able to sentence people for up to a year's imprisonment, and fine them up to £10,000. Justices of the peace can sentence people for up to two months' imprisonment and fine them up to £2,500.

319. Subsection (1) states that stipendiary magistrates are to be appointed by Scottish Ministers. Under the 1975 Act, stipendiary magistrates are appointed by a local authority, subject to the approval of Scottish Ministers.

320. Subsection (2) states that a stipendiary magistrate will be appointed for a sheriffdom. A stipendiary magistrate will be able to sit in any JP court within the sheriffdom to which they are appointed (section 49(4) of the Bill).

321. Subsection (3) makes it clear that the appointment of a stipendiary magistrate is to be conditional upon Scottish Ministers approving the decision to make such an appointment, on the advice of the sheriff principal for that sheriffdom.

322. Subsection (6) makes it clear that a stipendiary magistrate may exercise the same judicial and signing functions as a JP, and may use the title of office of JP in discharging those functions.

This means, for example, that a stipendiary magistrate is able to sign any documents for which a JP's signature would be competent. Stipendiary magistrates will continue to have the same jurisdiction as a sheriff sitting summarily (see section 7(5) of the 1995 Act, as amended by paragraph 7 of the schedule to the Bill).

323. Subsections (7) and (8) replicate the provisions for JPs at section 54(3) and (4) of this Bill by providing for stipendiary magistrates to be appointed for a term of five years, subject to the entitlement to resign at any time and need to retire at 70. These sections differ from the provisions of the 1975 Act, under which stipendiary magistrates are appointed until they reach retirement (which is set according to the conditions of appointment "applicable to service in local government").

324. Subsection (9) requires Scottish Ministers to comply with any order that they make as to procedure and consultation for appointing stipendiary magistrates. Subsection (10) illustrates what such an order may relate to. This allows Ministers to set out, by order, how stipendiary magistrates would be recruited. The order could, for example, set out any role that the Judicial Appointments Board for Scotland may assume in the recruitment process. These subsections replicate the provisions for JPs at section 54(5) and (6).

325. Subsection (12) concerns those currently holding the office of stipendiary magistrate. It replicates the provisions made for JPs at section 54(7). Subsection (12) makes provision for stipendiary magistrates' appointment to terminate on a date specified by order. It also states that they are to be appointed as a stipendiary magistrate under section 61 unless they decline their appointment. Their new appointments will start on the same the day that their old appointments cease.

Section 62: Stipendiary magistrates: further provision

326. This section makes provision for the payment, reappointment, removal and disqualification of stipendiary magistrates.

327. Subsection (1) gives Scottish Ministers the power to determine the remuneration, allowances and pension provision of stipendiary magistrates. The exact mechanism by which Ministers will determine this is still to be decided. One possibility is that the remuneration of stipendiary magistrates will be linked to another, independently determined, pay scale. Subsection (2) makes it clear that Scottish Ministers are to pay the expenditure arising from subsection (1).

328. Subsection (3) specifies those provisions in the Bill relating to JPs which also apply to stipendiary magistrates. These provisions relate to terms of appointment, reappointment, removal and disqualification.

329. With regard to reappointment, a stipendiary magistrate is to be reappointed at the end of their five year term unless they decline their reappointment; they are aged 69 years or over; they are disqualified under the provisions of section 60 relating to sequestration and bankruptcy; or the sheriff principal makes a recommendation against reappointment. Sheriffs principal will be able to recommend against the reappointment of stipendiary magistrates on the grounds that they

have not complied with any terms of appointment relating to their availability to meet local business needs (this provision could be especially relevant for part-time stipendiary magistrates) and on such other grounds as the sheriff principal considers relevant. Since stipendiary magistrates will not be subject to training, appraisal or residential requirements, failure to comply with any of those is not specified as a possible ground for removal. Since stipendiary magistrates will not be subject to appraisal, "inadequate performance" does not constitute a specific ground for a recommendation against reappointment.

330. Similarly, at subsection (3)(c) the "inadequate performance" provision set out at section 58(5)(b) of this Bill as a possible ground for removing JPs does not apply to stipendiary magistrates.

331. Under subsection (3)(d), the provisions of sections 59 and 60 apply to stipendiary magistrates as well as to JPs. These sections relate to the disqualification of solicitors who are JPs, and disqualification in the case of sequestration and bankruptcy.

Section 63: Signing functions

332. This section sets out who, in future, will be able to carry out the signing functions which can currently be undertaken by people on the supplemental list under sections 15(8) and (9) of the 1975 Act.

333. Subsection (1) makes it clear that no person who is a member of a local authority, a member of the Scottish Parliament, a member of the House of Commons or a member of the House of Lords can sit on the bench as a JP. JPs who become members of these bodies can still, however, exercise the signing functions set out at subsection (6). In addition, any member of a local authority can exercise the signing functions set out at subsection (6), regardless of whether or not they are a JP.

334. Subsection (6) defines what is meant by "signing functions". The definition is the same as that currently used in section 15(9) of the 1975 Act, and limits the range of documents which can be signed. For example, local authority members will be able to countersign written declarations that somebody has lost their insurance policy, or that they wish to change their name. They are also able to confirm facts within their own knowledge – for example by signing passport applications and shotgun licensing applications for people whom they know. However unlike "full" justices of the peace under the 1975 Act, or any justice of the peace under the current bill, people who can only undertake "signing functions" cannot sign affidavits (since these record oral statements) or warrants.

335. These sections are different in their effect from the provisions of the 1975 Act which related to signing functions. Under sections 15(8) and (9) of the 1975 Act, anybody placed on the supplemental list could undertake signing functions, but no other functions, by virtue of their office. Under section 15(1) of the 1975 Act, all JPs are currently placed on the supplemental list once they reach the age of 70. Under section 12 of the 1975 Act, as amended by the Bail, Judicial Appointments etc (Scotland) Act 2000, councillors are not able to hold office as full justices, but can be entered onto the supplemental list. Under section 11(1) of the 1975 Act, local

authorities are currently allowed to nominate up to one quarter of their councillors to be entered onto the supplemental list.

336. Under the provisions of this Bill, there will not be a supplemental list. JPs who have reached the age of 70 will not therefore have signing functions. Under subsections (2) and (3), all councillors will automatically have signing functions by virtue of their office, which will allow them to sign the range of documents set out in subsection (6). If a person were appointed as a JP after this section's provisions had come into force, therefore, and then became a councillor, they would remain as a JP at least until the end of their five year term of appointment, but would only be able to undertake signing functions. In addition, the bar on councillors sitting on the bench as justices will be extended to MPs, MSPs and members of the House of Lords.

337. The provisions at subsections (3) and (4) make it clear that forms (such as statutory declarations regarding lost insurance policies) which specify a "JP" as a possible signatory, can also be signed by a stipendiary magistrate or local authority member, if they are exercising signing functions.

338. Subsection (5) provides that JPs and councillors cannot charge a fee for exercising signing functions.

Section 64: Records and validity of appointment etc.

339. This section makes provision for the keeping of records of those holding office as JPs and stipendiary magistrates. It also provides for the appointments and acts of JPs and stipendiary magistrates to be valid, even if certain requirements set out in this Bill have not been met.

340. Subsection (1) requires Scottish Ministers to keep a list of all people who hold office as a JP or stipendiary magistrate; a record of the instruments of appointment for all JPs and stipendiary magistrates; and a record of any order removing a JP or stipendiary magistrate from office. Subsections (2) and (3) require Scottish Ministers to send the list and record to the sheriff clerk of each sheriff court, and for arrangements to be made to ensure that the list is available for public inspection.

341. Subsections (4) and (5) make it clear that the appointments and acts of JPs and stipendiary magistrates are still valid, even if their appointment has not complied with the requirements for procedure and consultation set out in an order made under section 54(5) or section 61(9); the requirement that the JP ordinarily live in or within 15 miles of their constituency at the time of their first appointment has not been met; or if a JP has breached one of their terms of appointment as set out in section 57(2).

PART 5 – CROWN OFFICE INSPECTORATE

Section 65: Appointment of Inspector

342. This section provides for the appointment of Her Majesty's Inspector of Prosecution in Scotland by the Lord Advocate and makes provision for the length of appointment and

associated matters. Subsection (5) allows the Inspector to authorise any person to exercise any functions of the Inspector.

Section 66: The Inspector's functions

343. This section provides for the functions of the Inspector.

344. Subsection (1) provides that the task of the Inspector is to secure the inspection of the Crown Office and Procurator Fiscal Service (the "Service"). Subsection (2) makes provision for a report to be provided by the Inspector to the Lord Advocate on any particular matter referred to the Inspector by the Lord Advocate. These subsections place the current administrative arrangements under statutory authority. In practice the Inspector and his or her staff will be civil servants.

345. Subsections (3) and (4) provide authority for the Inspector to require information of any person directly involved in the operation of the Service of a general or specific character including in electronic or documentary form. Subsection (5) places a duty on the Inspector to provide the Scottish Ministers with details of any expenditure incurred in the exercise of the Inspector's functions.

346. Subsection (6) requires the Inspector to submit an annual report to the Lord Advocate. Subsection (7) allows the Lord Advocate to comment on the draft annual report before the annual report is submitted under subsection (6). Subsection (8) provides for the annual report to be laid before the Scottish Parliament.

347. Subsection (9) ensures the independence of the Chief Inspector.

PART 6 – GENERAL

Section 67: Modification of enactments

348. This section introduces the schedule to the Bill which makes amendments to certain enactments.

Section 68: Orders

349. This section regulates the order making powers that are to be found in the Bill. All orders will be made by statutory instrument. Subordinate legislation powers which are inserted into the 1995 Act regulated by that Act.

Section 69: Ancillary provision

350. This allows the Scottish Ministers to make ancillary provision in statutory instruments in consequence of the Bill.

Section 70: Interpretation

351. This section provides definitions.

Section 71: Commencement and short title

352. This section provides for commencement of the Bill to be made by order.

SCHEDULE

Modification of Enactments

Sheriff Courts and Legal Officers (Scotland) Act 1927

353. Paragraph 1 is consequential upon Scottish Ministers having the responsibility for the administration of JP courts. They will also have responsibility for JP court clerks.

Public Records (Scotland) Act 1937

354. Paragraph 2 provides for amendments to the 1937 Act that will make it clear that the sheriff principal will be responsible for the preservation of the records of the JP courts within his sheriffdom.

Social Work (Scotland) Act 1968

355. Paragraph 3 is consequential on the changes made by section 40 of the Bill which introduce work orders. It provides that a person who accepts such an order is subject to the supervision of the Social Work department of the area where s/he is carrying out that work.

Education (Scotland) Act 1980 (c.44)

356. Paragraph 4 amends the Education (Scotland) Act to allow local authority prosecutions under that Act to be brought in the JP court.

Road Traffic Offenders Act 1988 (c.53)

357. Paragraph 5 is consequential upon the establishment of JP courts and inserts references to that court in place of the district court.

Environmental Protection Act 1990 (c.43)

358. Paragraph 6 provides that any income received from fixed penalty notices issued under the Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act.

Criminal Procedure (Scotland) Act 1995

359. Paragraph 7 is consequential upon the creation of JP courts. Subparagraph 1 substitutes references to JP courts for district courts where they appear in section 6 of the Act. The subparagraph further provides that prosecutions under the Education (Scotland) Act 1980 may be

brought in the JP court by someone other than the procurator fiscal. This will allow local authority prosecutions to be brought in the JP court.

360. Subparagraph (2) repeals subsections (1) & (2) of section 7 of the Act and makes further consequential amendments to that section.

361. Subparagraph (3) is consequential on the changes introduced by the introduction of JP courts which will be administered by the Scottish Courts Service.

362. Subparagraphs (4) & (5) are consequential on the introduction of JP courts.

363. Subparagraph (6) amends section 9 of the 1995 Act and provides that where several offences have been committed in different sheriff court districts the accused may be tried on a complaint in any of the JP courts for any one of those districts.

364. Subparagraph (7) repeals section 9A of the Act. Equivalent provision to that contained in that section is made in section 49(5) of the Bill.

365. Paragraph 8 amends section 10 of the 1995 Act and provides that crimes committed in different sheriff court districts may be prosecuted on complaint in any of the sheriff courts or JP courts in which the alleged offences took place. The present provisions may create a doubt as to whether the prosecution requires to be on indictment.

366. Paragraph 9 inserts a new section 10A into the 1995 Act and is consequential upon sections 22 and 29 of the Bill. It confers jurisdiction upon the sheriff and the procurator fiscal of the relevant courts where proceedings have been initiated in or transferred to a court other than that where the offence took place. This is intended to avoid any doubt over jurisdiction as otherwise conferred by sections 4, 9 and 10 of the 1995 Act.

367. Paragraph 10 makes provision consequential upon sections 3 and 27 of the Bill.

368. Paragraph 11 subparagraph (1) deletes certain words that are unnecessary.

369. Subparagraph (2) makes a number of minor amendments that tidy up existing provisions.

370. Subparagraph (3) substitutes intimation to the Crown Agent rather than the Lord Advocate in bail appeals made by witnesses.

371. Paragraph 12 adjusts existing provisions for the sake of accuracy in the 1995 Act.

372. Paragraph 13 is consequential on the introduction of FEOs by this Bill and provides that where an offender who has been fined and is under the supervision of an officer of the local authority fails to adhere to the payment arrangements for that fine the report that will be produced by the local authority officer should be submitted to the FEO where an enforcement order is in force in respect of the fine. Section 226F(4) as inserted provides that the FEO must

include a copy of that report with the report s/he is required to produce to the court when referring the case back to court.

373. Paragraph 14 is consequential upon the establishment of the JP courts.

374. Paragraph 15 is consequential upon the increase in sentencing power of the sheriff provided for in part 3 of this Bill.

375. Paragraph 16 inserts definitions into the 1995 Act as a consequence of the establishment of JP court.

376. Paragraph 17 makes further amendments to the 1995 Act as a consequence of the introduction of JP courts.

Bail, Judicial Appointments etc. (Scotland) Act 2000

377. Paragraph 18 repeals sections 8 to 11 and paragraph 2 and 3(2) of schedule 1 of the 2000 Act which make provision for the appointment and functions of JPs. Sections 54 to 64 of the Bill make new provision for the appointment and functions of JP. The repeal of section 11 and para 3(2) of the schedule to the 2000 Act is consequential on allowing education prosecutions to take place in JP courts.

Sexual Offences (Procedure and Evidence) (Scotland) Act 2002 (asp. 9)

378. Paragraph 19 makes provision consequential on section 19 of the Bill.

Criminal Justice (Scotland) Act 2003 (asp. 7)

379. Paragraph 20 makes provision consequential on section 49(5) of the Bill.

Dog Fouling (Scotland) Act 2003 (asp. 12)

380. Paragraph 21 provides that any income received from fixed penalty notices issued under the Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act.

Antisocial Behaviour etc. (Scotland) Act 2004 (asp. 8)

381. Paragraph 22 provides that any income received from fixed penalty notices issued under section 51 of the Act will accrue to the issuing authority. This is consequential on the disestablishment of the district court and the intended repeal of section 23(2) of the 1975 Act..

Enactments generally: references to district courts and justices

382. Paragraph 23 makes changes to enactments as a consequence of the introduction of JP courts. It also makes provision for Scottish Ministers to make further consequential amendments in that regard if necessary.

FINANCIAL MEMORANDUM

INTRODUCTION

383. The Criminal Proceedings etc. (Reform) (Scotland) Bill makes a number of changes to the law relating to bail, criminal proceedings and criminal penalties in Scotland. It also establishes JP courts, makes provision for the appointment, training and appraisal of justices of the peace and places the existing Inspectorate of Prosecution in Scotland on a statutory basis. For the purposes of this Memorandum the provisions of the Bill have been divided into eight major areas:

- Changes to the law relating to bail and remand (sections 1-5 of the Bill);
- Changes to criminal procedure particularly in relation to summary cases and to the sentencing powers of the summary courts (sections 6-38);
- The introduction of fiscal compensation offers (FCOs) and work orders (WOs) - two new forms of alternative to prosecution; (sections 39-42);
- Increasing the maximum level of fiscal fine that can be offered by the procurator fiscal (section 39);
- Provisions relating to the enforcement of fines and other financial penalties including the introduction of FEOs (section 43);
- Changes to the administration of courts in Scotland through the establishment of the JP court (sections 46-53);
- Reform of lay justice – including provision for the appointment, training and appraisal of justices of the peace (sections 54-64); and
- Placing the existing Inspectorate of Prosecution in Scotland on a statutory basis (sections 65-66).

384. The financial impacts of this package have been summarised in the following table. All figures are given in £m and references to the relevant paragraphs of this Memorandum, where more information on a particular aspect can be found, are provided in the first column. The costs for court administration are given at 2004-05 prices.

Area (and paragraph references)	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Bail & remand (385-391)	0.4	0.22	0.40	-	0.40	0.22	-
Criminal procedure (392-404)	-	-	-	-	-	-	(2.13)
FCOs and WOs (405-414)	-	0.40	-	0.40	-	0.80	-
Fiscal fines (415-421) (1)	-	-	-	-	-	-	(0.64)
Fines Enforcement (422-431)	-	0.47	0.40	0.09	0.80	0.70	(1.30)
Court admin (432-452) (2)	-	-	0.08	0.90	1.47	13.40	(1.29)
Lay justice (453-461)	0.70	0.20	0.70	0.10	0.70	0.30	-
COPFS Inspectorate (462)	-	-	-	-	-	-	-
Total ***Cash-releasing*** ***Time-releasing***	**1.1**	**1.29**	**1.58**	**1.49**	**3.37**	**15.42**	**(5.36)** ***(1.49)*** ***(3.87)***

Notes to previous table

(1) Figures do not include unquantifiable savings referred to at paragraphs 416 and 419, or possible savings from changing the method of enforcement of fiscal fines, which are referred to at paragraphs 416 and 421.

(2) Figures do not include unquantifiable pension liabilities referred to at paragraphs 433 and 441 to 443. All savings are cash-releasing and accrue to local authorities, as set out in paragraph 450.

BAIL AND REMAND

385. The Bill implements a number of the changes announced in the Scottish Executive's Action Plan on Bail and Remand, published in September of 2005. The anticipated cost implications are set out in the table below.

£m **Bail & remand**	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	0.4	0.22	0.4	-	0.4	0.22	-
Of which: COPFS	*0.1*	-	*0.1*	-	*0.1*	-	-
Courts	*0.3*	*0.22*	*0.3*	-	*0.3*	*0.22*	-
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total	**0.4**	**0.22**	**0.4**	**-**	**0.4**	**0.22**	**-**

Costs on the Scottish Administration

386. The changes have some cost implications for the Scottish Prison Service (SPS), the Crown Office and Procurator Fiscal Service (COPFS), the police and the SCS. Many of these cost implications are minor, and can be absorbed from within existing resources. The SPS has undertaken its own modelling of the impact of the changes to bail which will be made as a result of this Bill. It has concluded that the likely maximum impact of the overall package on prisoner numbers can be met from within existing capacity. SPS has indicated that, provided these places can be accommodated within existing capacity, the cost of these places can be met from within its existing resources.

387. The measures may lead to an increase in custody cases, and therefore cases which are subject to custody time limits. In addition, there may be an increase in reports required for breaches of bail. It is also likely that more extensive preparation will be required for bail hearings, and that more time will be needed to deal with issues surrounding bail. In addition, the appeals process may also become more complex with shrieval reports. As a result, the measures are likely to have cost implications for COPFS of approximately £0.1m each year. COPFS has indicated that it will absorb the costs and time pressures from prospective time-releasing savings realised as part of the summary justice reforms.

388. The changes will oblige the courts to take more time to set out reasons for granting bail in cases and to underline the importance of adherence to bail conditions. Courts will also have to ensure that each accused is given a written note of the date of his or her next court hearing. These measures have cost implications for the courts. These are thought to equate to an additional 310 sitting days, costing £300,000 each year (£200,000 for judicial time, and £100,000 for additional staff costs). A further £220,000 will be non-recurrent, relating in particular to one-off investment in additional court accommodation. This can be absorbed within current baselines. The £300,000 of recurrent costs will be funded, for the remainder of this SR period, from the fund for reducing reoffending and court reform as set out in table 1.01 of the Executive's draft budget 2006-07.

Costs on local authorities

389. The Executive does not anticipate any additional costs arising for local authorities as a result of the legislative changes to bail and remand.

Costs on other bodies, individuals and businesses

390. There are no material costs on other bodies, individuals or businesses which arise from the bill's bail package. In particular, the Executive does not anticipate that the package will have any material consequences for the legal aid budget. Any marginal increase in costs for bail appeals would be absorbed from within the current legal aid budget.

Savings

391. The Executive does not expect any savings to arise from the changes proposed in this Bill to the system of bail and remand.

CHANGES TO CRIMINAL PROCEDURE

392. The Bill also makes a number of changes to the detailed law of criminal procedure which will allow the courts, prosecutors and the police to handle cases more effectively. The majority of these changes will have no significant resource implications in terms of expenditure. Rather they will allow those whose task it is to process, prosecute and manage cases to do so more flexibly and in ways that should reduce waste and, in some cases, save time. The main driver behind these changes is not to make financial savings – it is to ensure that the rules of criminal procedure facilitate effective case handling and quicker resolution, which should in turn contribute to the overall aim of reducing reoffending.

393. No additional resources have therefore been allocated to implement the procedural changes – the organisations involved in administering the courts and processing court business will be able to adapt to the proposed changes without additional resources. The Executive hopes that they will improve the overall efficiency of the courts system, and that in doing so, they will deliver some modest time releasing efficiency savings. In many areas, however, any such savings will be difficult to quantify.

394. The most significant procedural change, in terms of its resource implications, is the adjustment to the maximum common law sentencing powers of a sheriff sitting summarily. This will allow sheriffs to sentence offenders to up to one year in custody in future, as opposed to the present maximum of three months (or six months where the accused has a previous conviction for personal violence or dishonesty). This means that some cases which are currently tried at the sheriff solemn level will instead be able to be tried summarily in future. The Executive anticipates that this change may result in time-releasing savings of **£1.93m** and cash-releasing savings of **£0.20m.**

£m **Court procedure**	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	-	-	-	-	-	-	(2.13)
Of which: COPFS	-	-	-	-	-	-	*(1.65)*
Courts	-	-	-	-	-	-	*(0.28)*
Scottish Legal Aid Board	-	-	-	-	-	-	*(0.20)*
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total ***Time-releasing*** ***Cash-releasing***	-	-	-	-	-	-	**(2.13)** ***(1.93)*** ***(0.20)***

Costs on the Scottish Administration

395. As mentioned above, the overall aim of these changes is to make the criminal justice system more efficient by reducing unnecessary delays and providing those who manage cases on a daily basis with the tools to do so flexibly and sensibly, ensuring waste is eliminated and the case is brought to a satisfactory conclusion as quickly as possible.

396. The introduction of a power for police to release people on undertakings will have implications for police resources. As a result, the provisions of the bill relating to liberation on a police undertaking will only be introduced in agreement with the Association of Chief Police Officers in Scotland, as resources permit following further development.

Costs on local authorities

397. The Executive does not expect local authorities to incur any additional costs as a result of the changes that the bill makes to criminal procedure.

Costs on other bodies, individuals and businesses

398. The Executive does not expect any other bodies, individuals or businesses to incur any additional costs as a result of the changes that the bill makes to criminal procedure.

Savings

399. The change to the sentencing powers of sheriffs sitting summarily should lead to total time-releasing savings of **£1.93m** for COPFS and the sheriff courts, since it is less resource-intensive if trials are conducted summarily. Details of the projected savings in this area are also

included in the Justice Department's efficient government technical notes (note J/T6 at www.scotland.gov.uk/Publications/2005/09/0895455/54558). The technical note relating to the review of summary justice is due to be updated in late March or early April of 2006. The change in sentencing powers should also lead to cash-releasing savings of £0.2m in legal aid.

400. Based on a professional assessment of need, it is estimated that approximately 550 cases a year might be tried in the sheriff summary courts which would otherwise have been tried in the sheriff solemn courts. Using data provided by the Crown Office and Procurator Fiscal Service (COPFS) and the SCS, the Executive estimates that summary trials are on average £6,090 less expensive than solemn trials in the sheriff courts for COPFS. They are also £1,200 less expensive for the courts (the SCS and the judiciary taken collectively). Prosecuting cases in the sheriff summary courts will therefore release resources (such as judicial and prosecution time) which will allow other cases to be brought to trial more promptly.

401. The Executive is not of the view that the savings achieved by transferring cases from sheriff solemn to sheriff summary will total £7,290 for each trial. Some of the cases being transferred will be among the less expensive solemn cases, and will become among the more expensive summary cases. Nevertheless, the Executive thinks that the move could yield time-releasing savings which would be the equivalent of £3,000 per case for COPFS, and £500 per case for the courts. This suggests that the total annual savings would be **£1.65m for COPFS** and **£0.28m** for the courts.

402. The change is also likely to lead to cash-releasing savings in legal aid as 550 more cases will be dealt with under summary, as opposed to solemn, procedure each year. The average cost to the legal aid budget of "low end" solemn procedure cases that make it to trial is £1,300, which means that the current cost of processing 550 such cases is **£0.72m**. Based on current figures, it seems likely that 42% of those cases involve pleas of guilty, and 58% will involve pleas of not guilty.

403. The legal aid cost of a sheriff court summary cases is £205 in cases where the accused pleads guilty, but it would be reasonable to expect the cost of the new more serious summary cases to be double that figure (£410) in which case the total legal aid cost of processing the not guilty cases under summary procedure would be 231 (42% of 550 cases) x £410, or **£0.09m**.

404. In cases where the accused pleads not guilty, the average summary fixed fee cost for 2004-05 was £750. However there is a facility for summary cases to be classified as exceptional, which changes the payment regime from fixed fee to "time and line". The average "time and line" cost for these cases in 2004-05 was £4,200. It might be reasonable to assume that 10% (32) of the new cases that transfer from solemn hearings and involve a not guilty plea will be eligible for "time and line" costs, with the balance attracting the fixed fee, in which case the total legal aid cost of these cases would be (32 x £4,200 + 287 x 750) or **£0.35m**. It would also be prudent to assume that 10% of the 550 cases that transfer from solemn to summary procedure will result in an application for legal aid for an appeal (which costs £1,375 on average) giving a cost for appeals of **£0.08m**, making the estimated total new cost of legal aid for these cases **£0.52m**. It is therefore estimated that savings of **£0.20m** will be made in legal aid expenditure as a result of this proposal.

INTRODUCTION OF TWO NEW FORMS OF ALTERNATIVE TO PROSECUTION

405. The Bill will introduce two new forms of alternative to prosecution which will be made available to prosecutors. Fiscals will have the power to make fiscal compensation offers (FCOs) or to offer work orders (WOs) to alleged offenders as an alternative to prosecution. The provisions relating to work orders will be piloted in the first instance. Procurators Fiscal will have the ability to offer an accused person the opportunity to perform a period of unpaid work in the community, successful completion of which will result in no further court action being taken in the case.

406. It is anticipated that the pilot of the WO will cost **£0.4/0.4m** in 2006-07 and 2007-08. The fiscal compensation offer will not lead to extra costs for the Scottish Administration or for other organisations. It may result in time-releasing savings, which are estimated in the next section at paragraph 418.

£m FCOs and WOs	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	-	0.40	-	0.40	-	0.80	-
Of which: Scottish Executive	-	*0.40*	-	*0.40*	-	*0.80*	-
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total	**-**	**0.40**	**-**	**0.40**	**-**	**0.80**	**-**

Costs on the Scottish Administration

407. WOs will be piloted, and will only be implemented nationally if the pilots are successful. £0.4/0.4m has been allocated for 2006-07 and 2007-08 in order to pilot this new alternative to prosecution from the fund for reducing reoffending and court reform as set out in table 1.01 of the Executive's draft budget 2006-07.

408. This costing assumes that four pilots each will provide 100 WOs per year, at a cost of around £500 per order. The estimate of £500 for each WO is based on the cost of a supervised attendance order. In addition to these costs of £0.2m, provision has also been made for the cost of monitoring, evaluation and administration of the pilot.

409. A decision on whether to implement the WO across the country will be taken on the basis of the results of the pilot programme. At present, therefore, the expenditure has been classified as "non-recurrent", although if the pilots are successful expenditure on WOs may become recurrent in future. If the pilot were to be implemented nationally, the Executive estimates that the annual costs could be in the region of £4m. Any additional resources for expansion of the programme would need to be allocated as part of the future spending review process.

Costs on local authorities

410. Those local authorities involved in the pilot process will have responsibility for organising and managing the unpaid work to be carried out by alleged offenders. The likely costs of £0.2/0.2m incurred by local authorities as a result of the pilots will be reimbursed from the £0.4/0.4m which has been allocated to the pilot. Participants in the pilot are yet to be identified.

Costs on other bodies, individuals and businesses

411. The current assumption is that the unpaid community work element of WOs will be organised by the relevant local authorities. On that basis, there should be no costs on other bodies, individuals or businesses as a result of this proposal.

Savings

412. The WO may produce time-releasing savings of £200-300 per case, as it is probable that a number of the cases in which it will be employed would otherwise have proceeded to prosecution in court. However these costings do not take into account the possibility of the order being breached, and the cost of following the procedures established to deal with breaches. The Executive's budgeting therefore assumes, at present, that the WO will not deliver savings. One reason for piloting this provision is to gain a fuller idea of its overall cost implications before a decision is taken on wider implementation.

413. The introduction of the fiscal compensation offer will lead to time-releasing savings for COPFS. At this stage it is not possible to give an accurate estimate of the potential time releasing savings specifically for fiscal compensation orders. The forecast savings of £0.5m to £0.8m at paragraph 418 are based on the number of cases which may be taken out of court as a result of the increase in the level of fiscal fines (see paragraph 415) and the introduction of fiscal compensation orders.

414. The Executive expects some marginal savings in the legal aid budget as a result of the introduction of fiscal compensation offers. However, for the same reasons as those outlined below relating to the increase in the maximum level of fiscal fines, no assumption has been made that significant legal aid savings will result as a consequence of this provision.

INCREASE IN THE MAXIMUM LEVEL OF FISCAL FINE

415. The maximum level of a fiscal fine that may be offered by a procurator fiscal is currently set at £100. The Bill will increase that maximum level to level 2 on the standard scale (currently £500). In addition, the method of enforcing fiscal fines will change so that, in future, people who do not respond to the offer of a fiscal fine will be deemed to have accepted that offer, which will then be enforced in a similar manner to other criminal penalties (paragraphs 422 to 431 explain the implications of the Executive's changes to the system of fine enforcement). A prosecution in respect of the case will only be brought to if the alleged offender specifically requests that this happens.

416. These changes will not lead to additional expenditure. Although it is not the primary aim of this policy, it is anticipated that the measures will lead to some time-releasing savings for the Scottish Administration. The combined effect of the increase in the maximum level of fiscal fines, and the introduction of fiscal compensation orders, may result in savings of £0.64m each year for COPFS.

£m Fiscal fines	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	-	-	-	-	-	-	(0.64)(1,2)
Of which: COPFS	-	-	-	-	-	-	*(0.64)*
Courts							*Not quantified (3)*
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total							**(0.64)**

(1) Includes savings from the introduction of fiscal compensation orders (see two paragraphs immediately below)

(2) Does not include any possible savings arising from the change in the method of enforcing fiscal fines (see para 421).

(3) See paragraph 419. These savings would mainly accrue to the JP/ district courts.

Savings

417. One consequence of the use of more alternatives to prosecution is likely to be a reduced burden on COPFS. They have undertaken parallel case marking exercises, in which procurators fiscal marked real cases as though fiscal compensation orders and the higher levels of fiscal fine were options which were available to them. Based on these exercises, it is anticipated that between 12,000 and 20,000 cases might be taken out of the courts as a result of the increase in the maximum level of fiscal fines and the introduction in fiscal compensation orders. COPFS anticipates that over time the use of these enhanced and new alternatives to prosecution might be closer to the higher end of this range, once guidance and training for the new measures has bedded in, and confidence in the alternatives increases.

418. The Executive estimates that the cost to COPFS of trying somebody in the district court, primarily in terms of staff time, is approximately £40 greater than that of issuing a fiscal fine or a fiscal compensation order. Increasing the level of the fiscal fine, and introducing a fiscal compensation order, is therefore likely to lead to time releasing savings for COPFS of **between £0.5m and £0.8m** each year. The table at paragraph 416 assumes that savings will be in the middle of this range. Information about the Executive's anticipated savings in this area is also included in the Justice Department's efficient government technical notes (note J/T6 at

www.scotland.gov.uk/Publications/2005/09/0895455/54558). The technical note relating to the review of summary justice is due to be updated in late March or early April of 2006.

419. This reduction in the number of cases going through the courts is also likely to lead to savings for the courts. The cases that will be taken out of the system will be at the district court level (the most minor cases currently processed through the courts). District courts are currently administered and financed by local authorities. At present, reliable data on the cost to the district courts of processing each case is not available, so it is not possible to quantify accurately these savings.

420. This change may also lead to some savings in the legal aid budget. However these are not likely to be significant. Many of the cases which are diverted out of the courts would not have received full legal aid in any case. In 2002-03, 26.7% of district court cases received legal aid, and the proportion in relation to cases which are likely to be diverted out of court may well be lower than that (as diversion will take place in less serious cases, often prosecuted at district court level, where a grant of legal aid is less likely to have been made). In addition, some people who receive fiscal fines may seek advice and assistance from their solicitor as a result of being offered the fiscal fine. For these reasons, although the Executive anticipates that in the medium term some modest legal aid savings will arise as a result of these proposals, it has not assumed that legal aid savings will be made in this area in making provision for the bill.

421. In addition, the change to the method by which offers of fiscal fines are enforced should produce some savings, although the exact level of saving is difficult to estimate. In 2002-03, 17,000 fiscal fines were not accepted. An assumption has been made that 40% of those cases result in prosecution. Secondly, it has been assumed that 80% of those people who currently plead guilty in court would choose not to dispute the offer of a fiscal fine when it is deemed to be accepted by virtue of the new provisions. The Executive is not assuming that 100% of those who currently plead guilty will not dispute the offer, since it seems reasonable to plan on the basis that more people will challenge the offer of a fiscal fine in future, since some of them will be of a higher level and it will be possible for the court to take them into account at the sentencing stage in any subsequent prosecution against the individual in question. 75% of those who appear in court for not accepting their fiscal fines plead guilty at present. The Executive is therefore anticipating that 60% (80% of the 75% who currently plead guilty) of those people who would otherwise have appeared in court will not do so in the future. Consequently, it is possible that the change to the means by which fiscal fines are enforced may result in a reduction in court cases which is equal to 24% (60% of 40%) of the 17,000 cases. This means that just over 4,000 cases would be taken out of the courts. These 4,000 cases would be in addition to the 12-20,000 cases referred to at paragraph 417, and could again lead to savings of £40 per case for the COPFS meaning that savings to COPFS of £160,000 could arise. These figures are provisional however, and will depend in particular on how many people challenge their fiscal fine offer, and the costs of enforcing fiscal fines under the fine enforcement regime. The Executive has not therefore made any assumptions that savings will arise as a result of the change to the method by which fiscal fines are enforced.

ENFORCEMENT OF FINES AND OTHER FINANCIAL PENALTIES

422. The Bill contains a number of measures which are aimed at improving the efficiency and effectiveness of fines enforcement. The measures will also help to enforce payment of unpaid

fiscal fines. They include a greater use of administrative processes to enforce the payment of fines, rather than relying on court-based procedures. It is estimated that these measures will cost £0.1/0.47/0.49m, in the period from 2005/06 to 2007/08, rising to an eventual recurrent cost of 0.8m in 2008-09 and thereafter.

£m Fines enforcement	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	-	**0.47**	**0.40**	**0.09**	**0.80**	**0.70**	**(1.30)**
Of which: SCS	-	*0.47*	*0.40*	*0.09*	*0.80*	*0.70*	
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total		**0.47**	**0.40**	**0.09**	**0.80**	**0.70**	**(1.30)**

Costs on the Scottish Administration

423. The main costs relating to these proposals will be met by the SCS.. Investment in the appointment FEOs (administrative staff who will take on much of the collection and enforcement role which currently entails a heavy involvement of both the police and courts) will help to deliver a much improved fines enforcement system. The Executive estimates that the total cost (including transitional costs) of appointing FEOs and supporting development of the new regime will be £0.1m in 2005-06, **£0.47m in 2006-07**, **£0.49m in 2007-08**, and £0.85m in 2008-09. By 2008-09, recurring costs are estimated at **£0.8m**.

424. The transitional costs which will be incurred from 2005-09 total **£0.7m** (£0.1/0.47/0.09/0.05m). They include IT development costs (£0.35m) setting up new methods of electronic payment (£0.05m) the recruitment and training of FEOs (£0.1m) and project management costs to deliver this change (£0.2m). Recurring costs are largely associated with staff – employing FEOs will cost £0.6m each year, which will cover the cost of 15-20 posts. There will also be recurring costs for IT maintenance, fees for new payment methods and system running costs to cover areas such as printing and postage.

Costs on local authorities

425. It is not anticipated that there will be any costs on local authorities as a result of our changes to fines enforcement. FEOs will be appointed by the SCS, and will initially operate in the sheriff courts. Their remit will extend to the lay tier of the courts at the same time as SCS assumes responsibility for the management of these courts on a phased basis, sheriffdom by sheriffdom.

426. Consideration was given to the possibility of allowing local authorities to appoint FEOs during the period when they will continue to have responsibility for running the district courts. However it was decided that it would be unhelpful to expect local authorities to oversee a significant change to the fines enforcement system, when in some cases they would only have responsibility for part of that system for one or two more years. The Executive's proposed policy

ensures that SCS will take responsibility both for appointing FEOs, and also for ensuring the long-term success of the fine enforcement system, coupled with the process of unifying the administration of the courts.

Costs on other bodies, individuals and businesses

427. There is a potential cost to the legal aid budget, if individuals seek advice and assistance in certain circumstances as a result of the actions of a fines enforcement officer (they may do this, for example, after an earnings arrestment or deduction from benefits order had been imposed on them). In 2004-05 the average cost for advice and assistance on fines matters was £37 per case. Costs from advice and assistance should however be more than offset by savings to the legal aid budget which are likely to arise from the reduction in fines enquiry courts, as more enforcement activity is taken forward administratively with recourse to the court only where that is necessary.

Savings

428. There is scope for savings to be made in the fines enforcement system, whilst improving its operation. 41,000 offenders were cited to attend fines enquiry courts in the sheriff courts in 2004-05. Non attendance can be as high as 70%, and warrants are issued in approximately 50% of non-attendance cases. The cost to the courts (for SCS and the judiciary) of fines enquiry courts in the sheriff courts is estimated at £0.8m annually (£20 for each of the 41,000 offenders cited) while the cost to the police of dealing with warrants arising from these cases is estimated to be higher. In addition, Fines Enquiry Courts in the sheriff and district courts are estimated to cost the Scottish Legal Aid Board £0.5m each year.

429. The new system of fines enforcement is being developed to have a greater emphasis on administrative processes, rather than court-based enforcement. Under the proposed system, once a fine has been imposed, FEOs will be able to alter payment terms, and impose sanctions such as attachment of earnings orders, without further recourse to the courts. This will reduce the number of fines enquiry courts. The Executive anticipates that this will lead to savings for the courts, since there will be fewer fines enquiry courts, and also for the police, who will have to enforce fewer warrants for failure to appear at fines enquiry courts. Further detail of the proposed scheme is set out in the report of the Fines Working Group, which was established to examine how best to implement the recommendations made in the Executive's "Next Steps" paper on summary justice reform. The report of the Fines Working Group is available from the summary justice reform website at www.scotland.gov.uk/Topics/Justice/19008/16628.

430. The Executive anticipates that the need for fines enquiry courts could be reduced by 30% by 2007-08. This would potentially result in significant savings in court and police time and warrants issued. Detailed work with all the organisations involved will be necessary to precisely quantify the level of savings and this work is now under way. Initial estimates indicate that annual time-releasing savings could potentially total £1.3m by 2007-08. As these estimates are at an initial stage, and the savings will be of a time-releasing nature, no assumptions have been made as to whether or not the proposals will free up cash within the organisations concerned. But they should allow resources to be directed to other priorities, such as rigorous enforcement when bail is breached, whilst the fine enforcement system itself will be improved. The Executive will assess the success of the new fines enforcement system as it is implemented, in

order to determine its effectiveness and efficiency and to ensure that lessons are continually learned and applied as the process develops.

431. The new system should also result in fewer people being imprisoned for non-payment of fines. In 2004-05 there were 6,098 receptions for fine default. Most of these receptions were for short periods of time. The average population of prisoners serving a sentence for fine default during the year was 61. Although the Executive believes that prison still needs to be retained as a possible final sanction for wilful fine defaulters, more effective enforcement - and greater use of sanctions such as arrestment of earnings and deductions from benefit – will reduce the number of people imprisoned for default. The Executive is not making any assumptions that savings will result from the likely reduction in the number of people sent to prison as a result of fine default.

UNIFYING THE ADMINISTRATION OF THE SCOTTISH COURTS

432. The Bill will unify the administration of the Scottish court system. It will do so by bringing the district courts, which are currently managed by local authorities, under the control of the SCS which currently runs the sheriff and high courts in Scotland.

433. Unification of the court system will take place on a phased basis, over a period of several years. Phasing will be on a sheriffdom by sheriffdom basis, so all of the district courts controlled by local authorities situated in a given sheriffdom will come under the management of SCS at the same time. The total non-recurrent costs of bringing the district courts under SCS management are estimated to be £13.4m, at 2004-05 prices. The eventual recurring costs are estimated at £10.3m, at 2004-05 prices. More detail as to how these costs will be covered is provided in the following table:

£m Courts admin	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Total cost on Scottish Administration -running district courts:	**-**	**-**	**1.8**	**0.9**	**10.3**	**13.4**	**-**
These costs will be partially covered by the following two elements (shown in italics) with the balance met by additional expenditure (set out in the last row of this table)							
Transfer from support grant to local authorities(1)	-	-	*(1.14)*	-	*(5.18)*	-	-
DEL addition to compensate for district court fine income (1)	-	-	*(0.58)*	-	*(3.66)*	-	-
Local authorities (transfer of funding to reflect transfer of service) (2)	-	-	-	-	-	-	(1.29)
Other bodies	-	-	-	-	-	-	-
Pension liabilities (3)	-	-	-	Not quantified	-	Not quantified	-
Total additional expenditure	**-**	**-**	**0.08**	**0.9**	**1.47**	**13.4**	**(1.29)**

(1) The money to be transferred from the support grant to local authorities, and the addition to the Scottish Executive's Departmental Expenditure Limit (DEL) baseline to compensate for the loss of district court fine income, are still subject to final agreement with COSLA and the Treasury. The figures used in this table are based on figures for 2002-03 calculated by the Joint Working Group on District Court Finance (see paragraph 446).

(2) As detailed in paragraph 450, the effect of the transferring £8.83m from local authorities will be to leave them with £1.29m, since the total cost to them of running the district courts in 2002-03 was £10.1m.

(3) As explained in paragraphs 441 to 443, it is not currently possible to calculate the scale of the pension liabilities which will transfer from local authorities to the SCS. This is because before the liability can be assessed, it is necessary first of all to determine which staff will transfer from local authority employment to SCS, and then to find out which of those staff will choose to transfer their previously accrued pensions into the PCSPS. The total additional expenditure line does not include the potential pensions liabilities.

Costs on the Scottish Administration

434. As unification progresses in each sheriffdom, SCS will incur non-recurrent costs (for refurbishment of district court buildings, to improve facilities for court users to integrate district court and sheriff court IT systems and to cover any other transitional costs) and recurrent costs (for staff and general running costs).

435. The benefits that this investment will realise for the administration of the summary criminal courts include:

- Consistent planning and delivery of good quality court services across Scotland by a single service provider;
- Integrated procedures and a single IT system;
- A simpler system whose organisation is more transparent and more effectively accountable;
- More flexibility in the use of court resources;
- Scope to implement improvements in practice quickly and effectively;
- More effective fine collection, and less waste of police and court time.

436. The Executive's current estimate of the breakdown of recurrent and non-recurrent costs, at 2004-05 prices, for each sheriffdom is as follows.

Sheriffdom	**Non-recurrent costs (£m)**	**Recurrent costs**
Glasgow and Strathkelvin	5.1	2.0
Grampian, Highland and Islands	1.3	1.3
Lothian and Borders	0.9	1.8
North Strathclyde	1.8	1.5
South Strathclyde, Dumfries and Galloway	2.5	2.1
Tayside, Central and Fife	1.8	1.7
Total	**13.4**	**10.3**

437. During the SR04 period, the only sheriffdom which will be unified will be Lothian and Borders. The costs of unification in this area (£2.7m in total) will be covered as follows:

- Local authorities are currently entitled to retain certain categories of district court fine income which they use to defray the costs of administering the district court. Upon unification that entitlement will pass from the relevant local authorities to SCS. In Lothian and Borders the amount retained as detailed by the report of the Joint Working Group on District Court Finance (on which see paragraph 446, below) totalled £0.58m, although fine income fluctuates from year to year.
- The Executive is currently allowing for a transfer of £1.14m in revenue support grant (RSG) from the authorities within the Lothian and Borders sheriffdom to be made upon unification, reflecting the fact that authorities will no longer incur expenditure for the administration of the district court (details on how that level of transfer was reached are set out at para 449).

- An allocation of £2.18m in 2007-08 from the £6.0/12.0m fund for reducing reoffending and court reform as set out in table 1.01 of the Executive's draft budget 2006-07. This allowance makes it possible to deal with all non-recurrent costs in the first year of unification within the sheriffdom – ensuring that remedial and upgrade work on district courts takes place quickly.
- Put together these figures total £3.9m, which is in excess of the combined recurrent and non-recurrent costs for the transfer in 2007-08. The additional £1.2m represents a prudent estimate of the necessary provision for inflationary pressures and a reserve to deal with any unforeseen costs and costs arising from the transfer of pensions from local authority schemes to the Principal Civil Service Pension Scheme (on which see paragraphs 441 to 443 below). Any money which is not needed for the first stage of unification may be carried forward to meet possible pressures in the later stages of court unification.

438. The costs of unifying later sheriffdoms will be met from the SCS baseline, following a similar transfer of RSG and retained fine income from the local authorities involved in each phase of unification to reflect the transfer of service. The SCS baseline beyond 2007-08 will be determined in the 2007 Spending Review and subsequent Spending Reviews.

439. The Executive estimates that by the time unification is completed, the total annual recurrent costs faced by SCS, at 2004-05 prices, will amount to £10.3m. This compares with estimated running costs of £10.1m (at 2002-03 values) incurred by councils in running the district courts (see para 446). Costs are based on estimates of the number of staff required for the projected level of court business, using available information on court business volumes and the number of fines and financial penalties collected by the district courts. Training, IT and accommodation costs for running district courts are based on the equivalent costs for running sheriff courts.

440. Non-recurrent costs are estimated at £13.4m, spread over a number of financial years (the number of years will be dependent upon the phasing of court unification). This includes the cost of refurbishment of district court buildings to improve facilities for court users and staff. This information is based on a survey of district court buildings commissioned by the SCS with the agreement of CoSLA and local authorities. This survey produced up to date estimates of the cost of backlog maintenance, and the refurbishment required to bring district courts up to the standard that the Scottish Court Service sets for sheriff courts. Other transitional costs include training of staff, IT hardware and software development to integrate sheriff court and district court IT systems, and project management.

441. In addition, the Executive anticipates that there will be non-recurrent costs relating to the transfer of local authority staff from the local government pension scheme to the Principal Civil Service Pension Scheme (PCSPS) as a consequence of court unification. It should be noted that court unification is not *creating* this liability – rather the process of staff transferring from one pension scheme to another creates a break point at which any shortfalls in the scheme must be accounted for.

442. The potential liability for the SCS can only be assessed in each sheriffdom nearer the time when the district courts in that sheriffdom are due to come under the management of SCS.

In order to assess the liability, it is necessary first of all to determine which staff will transfer from local authority employment to SCS, and then to find out which of those staff will choose to transfer their previously accrued pensions into the PCSPS. This process has not yet been undertaken in any of the sheriffdoms, including Lothian and Borders. Only once this has been done will it be possible to work out the costs. SCS is obtaining advice from the Government Actuary's Department concerning this liability.

443. This one-off cost relating to pension scheme transfers at each phase of unification will be met from the baseline budget of SCS who, upon conclusion of the process of unification, will be responsible for the administration of all Scotland's courts.

Costs on local authorities

444. An appropriate level of local government resources will be transferred to central government in order to take account of the fact that the responsibility for administering the district courts will be transferred. These transfers will take place when district courts in a particular local authority area transfer to SCS as part of the phased unification process. In order to ensure that these changes are equitable, the Executive has been involved in discussions with COSLA.

445. Local authorities currently fund district courts through a combination of fine income, which the court collects and is entitled to retain, and local authority expenditure. A transfer of these resources will take place upon unification to reflect the reduced expenditure that authorities will incur once they are no longer responsible for administering the district courts.

446. In order to ensure that accurate and agreed data relating to the costs and income associated with administering the district court were established as part of the policy development process, a comprehensive report on district court income and expenditure was commissioned in 2004. The report was conducted by an independent consultant and approved by both COSLA and the executive under the auspices of the Joint Working Group on District Court Finance. A full copy of that report can be accessed at http://www.scotland.gov.uk/Topics/Justice/19008/DCFinReport. The report established that local authorities' expenditure on district courts in 2002/03 was £10.125m. This expenditure was met by £3.656m in retained fine income with the balance of £6.469m met from local authority budgets.

447. The majority of the fine income that district courts are currently entitled to retain to defray district court running costs will be transferred in full upon unification. At that point the task of administering, collecting and enforcing these penalties will transfer to SCS and the rationale behind which authorities were entitled to retain these resources will transfer also. Authorities currently have the right to retain this income by virtue of section 23(2) of the District Courts (Scotland) Act 1975 – this allows authorities to retain income from fines imposed in the district court except where statute dictates otherwise. Local authorities also retain fiscal fine income, and income from some fixed penalty notices. The provisions entitling local authorities to retain that income will be repealed in each part of the country as unification proceeds.

448. The Treasury has agreed that the Scottish Executive should receive an increase in its Departmental Expenditure Limit baseline to compensate for the additional fine income that will be collected by SCS (and remitted to Treasury) as district courts are unified. This will ensure that the change in court administration does not lead to any loss of resources. It will allow the SCS to offset the cost of running the unified courts for which it will assume responsibility in the same way as local authorities currently do.

449. The remainder of the transfer of resources from local authorities will consist of a reduction to their revenue support grant (RSG) of an appropriate amount to reflect the reduced expenditure which they will incur, once they no longer have to cover the cost of running the district courts. The Executive is still at present in discussions with COSLA about this RSG reduction. The Executive anticipates reducing the RSG across Scotland as a whole by £5.18m (although that reduction will take place over a period of a number of years as the unification process will be phased). Although net local authority expenditure on district courts was £6.47m (based on the results of the joint working group report) the Executive plans to transfer only 80% of that amount in RSG, leaving £1.29m with local authorities across Scotland. This reflects the fact that, in general terms, the split between central and local funding of local authority services is 80/20. The Executive will not therefore be transferring to itself money raised through local taxation to pay for administration of the district courts.

450. The Executive does not expect any additional costs to fall upon local authorities as a result of court unification. Indeed, under the Executive's planned approach, local authorities would be left with a surplus of funding of £1.29m that could be applied to any residual costs resulting from the unification process or to other council services. The approach that the Executive plans to adopt better represents what is actually spent by authorities on district courts than a calculation based on the notional allocation made through GAE, since it is based on a survey whose outcome has been agreed by both CoSLA and the Executive. GAE for district courts totalled £4.78m in 2005-06.

451. These arrangements may need to be reviewed as a result of ongoing discussions with COSLA or during the phasing process, since by the time that some sheriffdoms come under unified management, inflation since 2002-03 will have made a significant difference to the costs of running the district courts. Any changes will be made following full negotiation and agreement with the local authorities concerned.

Savings

452. The Executive does not anticipate any financial savings as a result of court unification. It anticipates that the unified courts service will however be able to deliver a significantly improved service at a similar recurrent cost. This is because court unification will deliver:

- *More accountability:* placing the administration of the courts in the hands of SCS allows a single specialised agency, dedicated to court management and fine enforcement, to be in charge of the entire system. This makes it more accountable to customers and stakeholders.
- *More efficiency:* Procedures will be unified and streamlined. A larger sized agency can take advantage of economies of scale, better procurement and utilise its corporate services and overheads in a more efficient way.

- *Greater flexibility:* The introduction of increased administrative handling of all fine cases will allow specialised FEOs to manage fine accounts, determine enforcement action and take decisions that will maximise fine collection rates whilst minimising the need for the judiciary and the police to become involved;
- *More consistent investment:* As unification rolls out across Scotland a programme of upgrade and backlog maintenance will be carried out to ensure that all courts reach a set standard and meet requirements in relation to access for the disabled and provision of suitable accommodation for victims and witnesses; and
- *Responsiveness to change*: At present taking forward change in the court system in Scotland is a challenging process – involving over 30 separate organisations. Most local authorities are not in a position to treat district courts as a top priority. Placing the administration of courts in the hands of SCS will allow economies of scale to be realised and will place a single specialised agency, dedicated to court management and fine enforcement, in charge of the entire system. This will improve consistency and allow change to be managed more effectively.

REFORM OF LAY JUSTICE

453. The Bill changes the basis on which lay justices (Justices of the Peace, or "JPs") are appointed and makes provision for regulations to be made governing the recruitment and appointment process. In addition, training will be provided on a consistent basis for all JPs across Scotland, and compulsory induction or (for existing JPs) refresher training will be introduced. The Executive is also instituting a system of appraisal for JPs. The Executive estimates that the total cost of this, will be **£0.9m in 2006-07 and £0.8m in 2007-08.** These costs include the estimated cost of all of the secondary legislation and guidance which the Executive anticipates will result from the lay justice provisions of the bill. This money will come from the fund for reducing reoffending and court reform as set out in table 1.01 of the Executive's draft budget 2006-07. Financial provision for the recruitment and support of lay justices in 2008 – 09 and subsequent years will be a matter for the Spending Review in 2007 and subsequent spending reviews. However the cost of training JPs may reduce slightly from 2009-10 onwards, once all of the current cohort of JPs have completed their refresher training. This is why the recurring element of the costs in 2006-07 and 2007-08 is calculated at **£0.7m** rather than £0.9 or £0.8m.

£m Lay justice	**2006-07**		**2007-08**				
	Recurring costs	**Non-recurring costs**	**Recurring costs**	**Non-recurring costs**	**Eventual recurring costs**	**Total Non-recurring costs**	**Annual savings**
Scottish Administration	0.70	0.20	0.70	0.10	0.70	0.30	-
Of which: Scottish Executive	*0.70*	*0.20*	*0.70*	*0.10*	*0.70*	*0.30*	-
Local authorities	-	-	-	-	-	-	-
Other bodies	-	-	-	-	-	-	-
Total	**0.70**	**0.20**	**0.70**	**0.10**	**0.70**	**0.30**	**-**

Costs on the Scottish Administration

454. The Executive has calculated the additional expense of training by assessing the cost of a three day residential course of induction training for 30 JPs. It estimates that each course will cost a total of £20,000, and that three courses will be needed in 2006-07 (in addition to designing the course in itself), 11 will be needed in 2007-08 and 12 will be needed in 2008-09. This will provide induction and/or refresher training for the 608 JPs who currently sit on the bench, and also for up to 85 new JPs who are recruited in 2007-08 and 2008-09.

455. In addition to induction/refresher training, there is a likelihood that one training day a year will be provided centrally under the auspices of the Judicial Studies Committee in order to provide ongoing training to all JPs – for example on the impact of new legislation. The likely cost of this is £115,000 each year. Finally, there will be scope for more local provision of training (information that was obtained in late 2002 suggested that local authorities may currently spend a total of around £50,000 each year on training). Allowing also for additional expenses (such as the creation of a JPs' bench book) provision has been made for training of **£0.45m** each year in 2006-07 and 2007-08. It is possible that the amount of expenditure required in 2006-07 will be less than this, since fewer sessions of induction training will be provided in that year.

456. The requirement for spending on recruitment has been calculated by using the existing local authority and Executive expenditure on the recruitment and training of children's panel members, modified to take account of the fact that the current turnover of lay justices is much lower and the annual recruitment need for lay justices is therefore also lower.

457. Recruitment of JPs will be carried out under the general oversight of the Judicial Appointments Board for Scotland (the JAB) which will ensure that the principles and processes for appointment are consistent with those for other judicial appointments. Selection of JPs will be carried out by a Justice of the Peace Advisory Committee in each sheriffdom, which will be chaired by the sheriff principal. The Executive envisages that a small central recruitment unit will organise recruitment campaigning across Scotland, agreeing all the materials and approaches to be used with the JAB. The unit will deal with initial enquiries; will send out

application packs; and will pass on accurately completed applications to the JPAC for consideration. This unit may require two members of staff at a cost of £60,000 per annum. In addition, costs will be incurred for developing recruitment materials, such as standardised advertisements and application forms. These costs are likely to be greater in 2006-07 than in 2007-08. It may be reasonable to presume that JPACs will need to recruit 85 JPs a year during 2006-07 and 2007-08.

458. The Executive also recognises the need for appraisal of lay justices. The Executive has costed this by reference to the English appraisal scheme for magistrates, which involve appraisal every three years (or more often if there is a problem). The total cost of designing and delivering an appraisal programme for lay justices is calculated as £80,000 in 2006-07 and £60,000 in 2007-08. The greater costs in 2006-07 reflect the cost of producing training materials and training able lay justices to act as appraisers. Both of these tasks need to be carried out before the main appraisal programme begins in 2007-08. The total cost of recruitment and appraisal is estimated as being **£0.45/0.35m**.

Costs on local authorities

459. There will be no costs to local authorities as a result of these changes. Instead some costs which used to fall upon local authorities (such as the cost of training JPs, providing secretarial support for JPACs or placing recruitment adverts for JPs) will instead fall upon the SCS and the Scottish Executive. The bill also makes provision for Scottish Ministers to pay expenditure relating to the payment of stipendiary magistrates, and allowances for justice of the peace. All of this expenditure currently forms part of the overall cost of running the district courts, as calculated at paragraph 446, and is therefore taken into account in the figures provided in the tables at paragraphs 433 and 436. It will also be taken into account during our discussions with CoSLA on the cost of unifying the administration of the Scottish court system. As noted in paragraph 455, the Executive estimates that local authorities spend at least £50,000 each year on the training of JPs.

Costs on other bodies, individuals and businesses

460. As a result of the programme of improvements to lay justice, extra work may be undertaken by the District Courts Association (which has recently, for example, carried out an appraisal pilot which was funded by the Executive to the tune of £0.02m). Any further incidental costs which fall to the DCA will be met by the Executive out of the £0.9/0.8m mentioned above.

Savings

461. No savings are anticipated as a result of the proposed investment in lay justice. The investment will lead to cases being heard by justices who have been openly recruited from the local community under the mew arrangements and are subject to regular training and periodic appraisal.

INSPECTORATE OF PROSECUTION IN SCOTLAND

462. The Bill provides a statutory basis for the Inspectorate of Prosecution in Scotland. The inspectorate is already operational, and its costs were covered by a baseline transfer from the

Crown Office to the Finance and Central Services Department of the Executive which took effect from December 2003. Since the provisions of the bill merely put the existing structure onto a statutory footing, they do not result in any additional costs or savings to the Scottish Administration or any other bodies.

EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

463. On 27 February 2006, the Minister for Justice (Cathy Jamieson) made the following statement:

> "In my view, the provisions of the Criminal Proceedings etc. (Reform) (Scotland) Bill would be within the legislative competence of the Scottish Parliament."

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

464. On 21 February 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

> "In my view, the provisions of the Criminal Proceedings etc. (Reform) (Scotland) Bill would be within the legislative competence of the Scottish Parliament."

These documents relate to the Criminal Proceedings etc. (Reform) (Scotland) Bill (SP Bill 55) as introduced in the Scottish Parliament on 27 February 2006

CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

SP Bill 55-EN £11.40 Session 2 (2006)